Ministry of Foreign Affairs

IOB Evaluation

# Navigating a sea of interests

Policy evaluation of Dutch foreign human rights policy 2008-2013

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## Policy evaluation of Dutch foreign human rights policy (2008-2013)

December 2014

# Preface

Recognition of one's inalienable rights as a human being is not a given. Worldwide, many countries fail to safeguard their citizens' human rights, or safeguard them inconsistently. Promoting human rights has been ingrained in Dutch foreign policy for decades.

Since 2007, Dutch governments have formulated three policy documents, outlining the Dutch strategy to promote and protect human rights abroad. This policy evaluation on human rights looks into the rationale, relevance and effectiveness of Dutch foreign human rights efforts in the period 2008-2013. It addresses the policy coherence between foreign and domestic human rights policy, as well as between foreign human rights policy and international economic policy. The evaluation particularly focuses on five themes: human rights defenders; women's rights; equal rights for lesbians, gays, bisexuals and transgender people; freedom of expression and internet freedom; and business and human rights. All themes played a central role in Dutch foreign human rights policy in most of the period under review.

The evaluation covers nine countries/territories: Colombia, Guatemala, Kazakhstan, Morocco, Nigeria, Palestinian Territories, Russia, Sri Lanka and Zimbabwe. This report was compiled on the basis of two country studies (Morocco and Russia), existing IOB and EU evaluations, interviews and literature and document review.



The policy evaluation was conducted by IOB senior evaluator Marijke Stegeman and IOB researcher Saskia Hesta. Amina Bouayach (Fédération Internationale des Ligues des Droits de l'Homme) participated as external expert in the country study in Morocco and Max Bader (Leiden University) was external expert for the country study in Russia. IOB researcher Aline van Veen contributed to the project review (until April 2014).

The evaluation was guided by a reference group, chaired by then IOB director Ruerd Ruben, and consisting of representatives of the human rights department at the Ministry of Foreign Affairs of the Netherlands: Alexandra Valkenburg, head of the human rights division, and deputy head Dewi van de Weerd. External experts to the reference group were Martha Meijer (independent human rights consultant), Yvonne Donders (University of Amsterdam), Lydia van de Fliert (external expert European Commission) and René Rouwette (PhD researcher). IOB senior evaluators Nico van Niekerk and Bas Limonard acted as internal peer reviewers. All provided invaluable comments. Joy Burrough-Boenisch and IOB desk editor Jochem Hemink provided valuable comments regarding language and editing.

Special thanks go to the colleagues of the Embassies and Permanent Representations in Geneva, Russia and Morocco, who put a lot of time and effort into sending project documentation, facilitating the country visits, participating in the interviews, and finally, elaborately scrutinising and commenting on the draft reports. I would sincerely like to thank all for their cooperation and openness.

Last, but certainly not least, I would like to extend my gratitude to those organisations that are carrying out human rights projects under extremely difficult and sometimes dangerous circumstances.

The final responsibility for the content of the publication rests with IOB.

Geert Geut
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# List of abbreviations

| | |
|---|---|
| ACHPR | African Commission on Human and Peoples' Rights |
| AIV | Advisory Council for International Affairs (*Adviesraad Internationale Vraagstukken*) |
| BMO | *Breed mensenrechten overleg* (discussion platform on human rights) |
| BMO-NL | *Breed mensenrechten overleg Nederland* (discussion platform on human rights in the Netherlands) |
| BRICS | Brazil, Russia, India, China and South Africa |
| CAHVIO | Convention on Preventing and Combating Violence against Women and Domestic Violence (Council of Europe) |
| CDDH | Steering Committee for Human Rights (Council of Europe) |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CoE | Council of Europe |
| COHOM | EU Council Working Group on Human Rights |
| CRC | Convention on the Rights of the Child |
| CRPD | Convention on the Rights of People with Disabilities |
| CSR | Corporate social responsibility |
| DFID | United Kingdom Department for International Development |
| DMM | Multilateral Organisations and Human Rights Department |
| DMM/MP | Human Rights and Political and Legal Affairs Division |
| ECHR | European Convention for the Protection of Human Rights and Fundamental Freedoms |
| EC | European Commission |
| ECRI | European Commission against Racism and Intolerance |
| ECtHR | European Court of Human Rights |
| EEAS | European External Action Service |
| EIDHR | European Initiative for Human Rights |
| EU | European Union |
| EUR | Euro |
| FIDH | *Fédération Internationale des Ligues des Droits de l'Homme* (International Federation for Human Rights) |
| FRA | European Union Agency for Fundamental Rights |
| GRETA | Group of Experts on Action against Trafficking in Human Beings (Council of Europe) |
| HRA | Human rights ambassador |
| HRC | Human Rights Council |
| HRD | Human rights defenders |
| HRF | Human Rights Fund |
| IACHR | Inter-American Commission on Human Rights |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IDAHOT | International Day Against Homophobia and Transphobia |
| ILGA | International Lesbian Gay Bisexual Trans and Intersex Association |

| | |
|---|---|
| IOB | Policy and Operations Evaluation Department (*Inspectie Ontwikkelingssamenwerking en Beleidsevaluatie*) |
| LGBT | Lesbian, gay, bisexual and transgender |
| LGBTI | Lesbian, gay, bisexual, transgender and intersex |
| MATRA | *Maatschappelijke transitie* (Societies in Transition) |
| MFA | Ministry of Foreign Affairs of the Netherlands |
| MvT | *Memorie van Toelichting* (Explanatory Memorandum to the MFA Budget) |
| NGO | Non-governmental organisation |
| NIHR | Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) |
| OAS | Organization of American States |
| OECD | Organisation for Economic Co-operation and Development |
| OHCHR | Office of the High Commissioner for Human Rights |
| OIC | Organization of the Islamic Conference |
| ODIHR | Office for Democratic Institutions and Human Rights (OSCE) |
| OSCE | Organization for Security and Co-operation in Europe |
| PR | Permanent Representation |
| RNW | Radio Netherlands Worldwide |
| SOGI | Sexual orientation and gender identity |
| SR | Special Rapporteur |
| UN | United Nations |
| UPR | Universal Periodic Review |

# Main findings and issues for consideration

# 1 Introduction

In recent decades, human rights have been labelled a cornerstone of Dutch foreign policy. This policy evaluation addresses article 1 (2) of the Explanatory Memorandum (MvT) to the Ministry of Foreign Affairs Budget, entitled 'protection of human rights'. It covers the six-year period 2008-2013, during which EUR 324 million was spent by the Dutch Ministry of Foreign Affairs on human rights all over the world.[1] The period under review saw three different governments and three policy papers (2007, 2011 and 2013). Dutch policy has a thematic focus and this evaluation includes five of the eight priority areas of the 2013 human rights strategy: human rights defenders; equal rights for women; equal rights for lesbian, gay, bisexual and transgender people (LGBT); freedom of expression and internet freedom; and business and human rights.

The question at the heart of the evaluation is: Given the resources available and taking into account the circumstances under which policy implementation has taken place, to what extent have the efforts made by the Netherlands contributed to better respect for, and the protection and promotion of human rights? Following the prescribed template, this policy evaluation looks into the rationale and relevance of human rights policy, the instruments applied and the expenditure on human rights.[2] It also assesses policy effectiveness, albeit that in most cases the results are influenced by a variety of factors that are outside the scope of Dutch policy interventions and project support.[3] The coherence between foreign human rights policy and both international economic policy and domestic human rights policy is also addressed.



The evaluation covers nine countries/territories: Colombia, Guatemala, Kazakhstan, Morocco, Nigeria, Palestinian Territories, Russia, Sri Lanka and Zimbabwe. It includes both non-financial means, such as negotiations and diplomacy, as well as financial support to the Office of the High Commissioner on Human Rights (OHCHR) and to projects carried out by non-governmental organisations (NGOs), particularly those funded through the Human Rights Fund (HRF). It addresses Dutch human rights involvement in multilateral forums, more particularly the United Nations Human Rights Council (HRC), as well as in the European Union (EU) and at country level.

The most important data collection methods were document review and interviews. The most important sources for document review were internal information from embassies and permanent representations and project reports. Interviewees included staff of the Ministry of Foreign Affairs, representatives of EU member states, EU staff, representatives of NGOs and independent experts.[4] The evaluation built on its own research and existing evaluations:

[1] Chapter 3 presents details. Projects related to human rights but not labelled as human rights projects: for example, projects in the area of sexual and reproductive health and rights are not included..

[2] Regeling Periodiek Evaluatieonderzoek (RPE).

[3] In Chapter 1, evaluation issues and limitations are described more in detail.

[4] Annex 4 lists the number of interviews with the different types of respondents.

- Seven country studies (Colombia, Guatemala, Kazakhstan, Nigeria, Palestinian Territories, Sri Lanka and Zimbabwe) that were part of evaluations carried out by the Policy and Operations Evaluation Department (IOB) in 2012 and 2013.
- Two country studies (Morocco and Russia) carried out for this evaluation. Both countries were selected because they are situated in regions that were under-represented in the other building blocks of the evaluation and because they are, for different reasons, important countries for the Netherlands.
- IOB policy evaluation of Dutch involvement in the Council of Europe (2011).
- Two evaluations of EU interventions: the Thematic Evaluation of the European Commission Support to respect of Human Rights and Fundamental Freedoms (2011) and an evaluation of the European Initiative on Democracy and Human Rights support to human rights defenders (2010).
- Year reports (2008-2013) of the Office of the High Commissioner for Human Rights, three assessments of the work of the OHCHR (2011, 2012, 2013) and some reports of Special Rapporteurs concerning the thematic areas under review.
- An assessment of eleven worldwide projects.

The overall conclusion of the policy evaluation is presented in section 2. It is followed by the main findings on which the overall conclusion is based. The last section provides issues for consideration.



## 2 Overall conclusion

The Netherlands is an important player in the field of human rights in multilateral forums and in the framework of the EU. At country level, in four of the nine countries under review the Netherlands was a key actor during the period of evaluation, while in the other countries its role was more modest. Applying a variety of instruments, the Netherlands has contributed to *the promotion of human rights*. Results include the adoption of UN resolutions, EU Council decisions and a better informed population. At country level, the Netherlands has also contributed to creating conditions for *improved respect for* and *protection of human rights*. Some effects were found, e.g. modifications to legislation, providing a safe environment for human rights defenders or, occasionally, the release of an imprisoned person. In most cases, however, information on the response and follow-up to actions was scarce. In addition, obtaining achievements, or lack thereof, is influenced by many factors outside the scope of the Netherlands. A critical note can be made with regard to the degree of coherence between foreign human rights policy and economic policy. In addition, domestic human rights issues may hamper the credibility and hence the effectiveness of foreign human rights policy.

# 3 Main findings

*1) Dutch human rights policy priorities have been consistent during the period of evaluation. The importance of human rights among other foreign policy objectives has varied. Since late 2012, human rights have again been at the forefront.*

During the period of evaluation, three human rights policy documents were issued (2007, 2011, 2013). Civil society was consulted during the drafting process and, in 2007 and 2013, also invited to actively participate in this process. All strategies have a thematic focus and the priorities have mostly remained the same. The choice of priorities is based on Dutch expertise in the selected areas and an assumed division of labour between EU member states and countries that are considered like-minded. A critical note is that this division of labour has not been realised for policy implementation at country level.

The importance attached to human rights among other foreign policy objectives, such as security or economic development, has varied. In the first period under review (the government of 2007-2010), promoting and protecting human rights was a clear priority in foreign policy. In the second period (the government of 2010-2012) the promotion of Dutch economic and other interests was emphasised and human rights lost some of its importance among other foreign policy priorities. An illustration: during this period, in the framework of the UN, the Netherlands impeded EU consensus on investigating human rights issues regarding the Palestinian Territories. The Netherlands lost some credibility in this period. Late 2012, human rights were again placed at the forefront and this is reflected in an ambitious human rights policy document. A critical note is that this policy document mostly emphasises what the Netherlands will do and much less what it aims to achieve with regard to the specific priority areas.



*2) New developments in the human rights debate are acknowledged in the latest human rights policy, but the response is too unspecific.*

The importance of human rights standards and platforms, such as the HRC, is increasingly being challenged by countries with emerging economies.[5] Some of these countries, e.g. Russia and China, promote traditional values that conflict with human rights standards. In addition, the existing human rights infrastructure is being challenged for failing to provide an adequate answer to serious human rights violations, such as those committed in the conflicts in Sudan or Syria.

In Dutch human rights policy documents – particularly the most recent – the increasing influence of new economies in the human rights arena is recognised. In the most recent strategy, the response includes supporting and promoting innovative activities, such as the development of internet applications, trilateral cooperation, and an integrated approach to address civil and political rights, as well as economic, social and cultural rights. However,

5 Emerging economies are referred to as BRICS (Brazil, Russia, India, China and South Africa). Nigeria, Indonesia, Mexico and Turkey are also becoming influential.

the response is incomplete. A strategy on how to apply these tools when operating in multilateral forums or at country level has not been elaborated.

*3) The Netherlands has a high profile on human rights, both internationally and in most countries. Staff reduction at embassies thwarts Dutch ambitions.*

In the international arena, like-minded other countries and human rights NGOs consider the Netherlands to be a committed and professional actor, demonstrating expertise in human rights and good negotiating skills. In multilateral forums such as the HRC, the Netherlands is involved in drafting and negotiating resolutions. Results include the Netherlands' contribution to averting the adoption of a 2013 HRC resolution that would have restricted freedom of expression.[6] In the framework of the EU, the Netherlands has, among other things, actively participated in the drafting of guidelines, e.g. the 2013 guidelines on LGBTI persons.

At country level, the reputation of the Netherlands with regard to promoting human rights varies. In Kazakhstan, Russia, Zimbabwe and, until 2011, Guatemala, the Netherlands was a prominent actor in promoting human rights, both by taking initiatives in the framework of the EU and in its bilateral relations. In other countries its role was more modest. Reasons for diverging degrees of involvement include tactical considerations, Dutch economic or other interests, historical ties, and capacity available at embassies. The prominent Dutch position in Guatemala ended with the closing down of the embassy. The resulting gap could not be sufficiently filled by the EU, while the Dutch representation in a neighbouring country lacked the capacity to keep up the same level of commitment in Guatemala. A reduction of staff at embassies compromises Dutch ambitions in the field of human rights in other countries as well.



*4) Dutch human rights policy is to a great extent implemented within the framework of the EU, at both multilateral and country level. At country level, lack of consensus between member states leads to limited joint EU actions taking place.*

The formal role of the EU in human rights policy implementation has increased substantially, particularly since the Lisbon treaty. In 2012, the EU adopted a Strategic Framework and Action Plan on Human Rights and Democracy. At country level a human rights strategy guides EU action, but these documents are not publicly available. Implementation tools include dialogues, démarches, public statements, trial monitoring and project support. When speaking out, the EU – representing 28 member states – can voice its criticism with more force and cogency than the Netherlands is able to do bilaterally. The Netherlands has been an active participant in EU working groups in which EU action on human rights has been discussed and prepared. As was mentioned above, the Dutch role in taking initiatives has varied.

6 A/HRC/22/L.40.

The EU maintains some form of political dialogue on human rights with all countries under review.[7] The results are mostly limited to keeping human rights on the agenda. Trial monitoring and the follow-up of legal cases took place regularly (Guatemala, Kazakhstan, Palestinian Territories, Russia, Sri Lanka, Zimbabwe) and the Netherlands was always among the member states among whom this task rotated. Other joint action on human rights varied per country and was found to be largely dependent on the degree to which EU member states have economic, geopolitical or other interests to defend as well. Where these other interests at stake are high, it is more difficult to agree on joint EU action on human rights, or the message is toned down as a result of a compromise between the member states. This was most prominent in Morocco and Russia. By contrast, in Zimbabwe, the EU was very vocal on human rights. Information on the follow-up to EU actions is scarce, but positive results were found, such as the release of a journalist in Sri Lanka.

5) *The Netherlands expresses concerns on human rights in its bilateral relations, both publicly and through silent diplomacy. Information on the follow-up to these actions is scarce.*

The Netherlands has also expressed human rights concerns bilaterally, both publicly and through silent diplomacy. Reporting is mostly limited to visits by ministers, the human rights ambassador or other high- level delegations and provides information on the subjects discussed and people met. Silent diplomacy is said to be used frequently by embassy staff and to cover a wide range of human rights issues. Despite elaborate reporting on the human rights situation in countries, there is no systematic reporting on the effects of silent diplomacy. Among the thematic areas under review, the rights of LGBT people were addressed in Nigeria (silently), Russia (both publicly and silently) and Zimbabwe (mostly silently). In Morocco, the rights of women were an important theme. In Zimbabwe, much attention was given to human rights defenders, while in other countries (Guatemala, Russia) their position was part of a general discussion on human rights. Overall, it is difficult to gauge the effectiveness of bilateral diplomatic efforts. Information on the follow-up to interventions is generally scarce or absent. Even when this information is available, results, or lack thereof, cannot be attributed to Dutch interventions. Decisions in the field of human rights mainly depend on willingness and political interests of the governments in the countries concerned.



6) *The Dutch focus on LGBT is well-known and has been effective. Although the Netherlands has a broad human rights agenda, its prominent standpoint on the rights of LGBT people carries a risk of overshadowing other human rights efforts.*

The Netherlands has been a leader in drawing attention to the rights of LGBT people, for example by taking the initiative for a UN declaration concerning these rights and by providing experts to the Council of Europe (CoE) and the EU. This focus on the rights of LGBT people has given the Netherlands visibility and it has also been successful: the rights of LGBT people are now part and parcel of EU human rights policy, and more countries are defending the importance of these rights. In the HRC, the Netherlands has encouraged non-Western countries to take the lead, with varying success.

7 Paragraph 4.1 specifies the various types of dialogues and consultations.

At country level, there is no standard strategy for the way in which the rights of LGBT people should be defended. Public statements provide moral support to LGBT persons, but may also be counterproductive. LGBT organisations in the countries under review valued the Dutch context-sensitive approach for addressing LGBT in their country. Russia provides an exception. Here, despite its broad human rights agenda, the Netherlands was particularly vocal on gay rights, partly under pressure from media and Dutch Parliament. Some human rights organisations appreciated this public support, while others considered it too confrontational and thus counterproductive. All human rights organisations that were interviewed pointed to the risk of overshadowing other human rights efforts.

7) *Support for civil society is an important instrument for policy implementation. Projects financed by the human rights fund are in most cases effective.*

In countries with limited possibilities of joint EU action for human rights, either because of the government's reluctance to be receptive to foreign human rights interventions or because of lack of consensus among EU member states and/or insufficient capacity at EU delegations, the strengthening of civil society is an important option for promoting and contributing to the protection of human rights. Maintaining contacts with human rights organisations, attending human rights events of these organisations and support for projects were found to be useful means for strengthening civil society. Due to decreasing staff capacity at embassies, there is a tendency to spend the budget on a limited number of substantial projects being carried out by experienced, often international, NGOs.



With regard to the projects, compared to the previous policy evaluation (2006) the quality of project proposals and reporting has improved. There is still room for further improvement though, most notably the defining of medium-term objectives that are realistic rather than vaguely formulated or non-realistic. Most projects included in this evaluation fully or almost fully realised the envisaged outputs and overall the realisation of envisaged outcomes is satisfactory.

A critical remark is that many projects focus on raising awareness of human rights, whereas less attention is given to other aspects such as providing assistance to victims, amending legislation, and prosecution of perpetrators. In addition, there is insufficient coordination with other donors on project themes.

An issue of concern is that the list of countries eligible for the human rights fund is limited and that some regions are under-represented, e.g. Western Africa. Furthermore, though the budget for the Human Rights Fund (HRF) increased over the period of evaluation, other funding for human rights decreased. Most notable is the reduction of programmes to support the rule of law in former partner countries. In addition, an external factor limits project support: in a number of countries, national NGOs are increasingly confronted with rules and regulations that impede foreign funding.

*8) International economic policy and human rights policy remain to a great extent two separate tracks of foreign policy.*

The Netherlands seeks to integrate human rights in its international economic policy, but in practice this is still in its infancy. In this respect, not much has changed since the previous policy evaluation on human rights, issued in 2006. Policy documents emphasise the potential for synergy between Dutch international economic policy and human rights policy and do not refer to the fact that economic interests may also impede action in the area of human rights. There is no strategy on how the domains can be made mutually reinforcing or on how to operate when there are conflicting interests. In some instances, e.g. Nigeria, it was found that economic interests did lead to careful manoeuvring, thus avoiding that the promotion of human rights jeopardised international economic policy.

Tools for integrating human rights in international economic policy include expressing concerns on human rights during trade missions. In the countries under review, this is systematically the case in Russia and occasionally in Colombia and Nigeria. Companies participating in trade missions facilitated by the Dutch government are required, and trusted, to adhere to principles of corporate social responsibility.[8] There is no systematic information on whether and how companies have translated the adherence to these principles into practice.



In 2011 the UN guiding principles on business and human rights were adopted. They rest on three pillars: states' obligation to protect from human rights abuses; companies' responsibility to respect human rights; and access to remedy for victims. The Dutch government has adopted a national action plan on business and human rights that reflects a political consensus between the different ministries involved. It is in line with the UN principles, although the plan particularly focuses on providing information to companies and is less concrete about obligations and remedies.

*9) The credibility of foreign policy may be hampered by human rights issues at the domestic level.*

The human rights situation in the Netherlands is much more favourable than in the countries under review, and until recently a domestic human rights policy had not been formulated. In spite of this favourable human rights situation, UN treaty bodies and monitoring mechanisms of the CoE have raised critical observations or expressed concerns on the state of affairs, in particular concerning migrants, asylum seekers and people unlawfully present in the Netherlands. States participating in the Universal Periodic Review (UPR), a UN peer review process on human rights, have also suggested changes to be made in Dutch domestic policy: for example, accelerating the ratification process of UN treaties. In Dutch foreign policy much emphasis is given to internationally agreed standards and the monitoring mechanisms that look into their implementation. The UPR is also considered an important instrument. The Dutch reaction to recommendations of the UPR, observations of the committees and reports of the CoE mechanisms varied. Positive

8 Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.

developments are the establishment of a national human rights institute (following from the UPR), the establishment of an ombudsman for children (following from concluding observations by a UN Committee) and some improvements in the situation of asylum seekers (following from recommendations by the CoE). But in other cases reactions were either very general or limited to statements that recommendations were already being implemented. These lukewarm reactions, even if they are justifiable when the recommendations are not realistic, may hamper the credibility of Dutch foreign policy in the field of human rights and thus the potential of this policy to achieve results.

# 4 Issues for consideration

*Human rights strategy*

1) Human rights policy documents inform mostly on actions to be taken. Policy could be more explicit on the reasons for the selection of the priorities, on the envisaged objectives and on the ways in which the objectives will be reached with the different instruments at hand, e.g. the UPR process. By developing this more strategic thinking, in combination with following up the application of instruments, more insight can be provided into what works and why.



2) At present the response to changes in the human rights debate, including the increasing influence of new players, is insufficiently elaborated. Experts from outside the Ministry of Foreign Affairs could be consulted on the development of a strategy on how to operationalise the response to these challenges.

*Policy implementation*

3) The adoption of an EU human rights strategy and plan of action expresses a clear EU commitment to human rights. With regard to policy implementation in the framework of the UN, there is a division of labour among member states. Such a division of labour hardly exists with regard to policy implementation at country level. Dutch policy implementation could benefit from a better division of labour among EU member states and, if applicable, among other countries that are active in the field of human rights. In EU discussion platforms such as EU Council Working Group on Human Rights (COHOM) the Netherlands could, as a first step, strengthen its efforts to reach consensus on a division of labour with regard to thematic areas.

4) Among the EU instruments whose effectiveness is most questioned are the high-level EU dialogues on human rights. In EU discussion platforms, the Netherlands could emphasise the need for a more systematic reflection on how to apply this instrument more effectively.

5) Operating in the framework of the EU has obvious advantages: the voice of 28 states is stronger than the voice of the Netherlands alone. The EU can also apply other tools for the promotion of human rights and the prevention of human rights violations, such as clauses in agreements on development cooperation. The downside is also clear:

compromises are needed and these may lead to weakened language. When EU consensus is lacking with regard to action on an important human rights issue, other options could also be considered, such as working with smaller coalitions of like-minded EU member states, or bilateral démarches.

6) Support to civil society was found to be essential for Dutch human rights policy implementation and it should be sustained and, when possible, expanded to more countries, both financially and otherwise. When selecting projects for the HRF, more attention could be given to defining the most important needs and to avoiding that the only projects supported are those focusing on human rights promotion. Protection of human rights is equally important. In addition, despite limited staff capacity, support to smaller national NGOs should not be neglected.

7) Maintaining sufficient staff capacity at all embassies is critical for achieving the high standards set in the current human rights agenda. In line with this, high staff turnover – a fact of life within the Ministry of Foreign Affairs – requires thorough devolution of knowledge.

8) At present, public reporting on diplomatic action is scarce. As publicity may be harmful, such reporting cannot be very specific. However, providing brief external information, at least on the frequency of démarches, would make human rights policy more transparent.



9) Coherence between human rights policy and other policy areas entails that all members of the government see it as their task to discuss human rights issues abroad. Therefore, structural input is necessary to provide travelling members of the government with adequate information on human rights issues they could raise in their particular field.

10) International human rights policy and international economic policy are two separate tracks. A step towards better integration would be to improve companies' reporting on the implementation of the OECD guidelines and to monitor compliance.

11) There is no consensus in Parliament and society on the fact that in the Netherlands too, human rights standards are not fully implemented, nor on the need for improvement with regard to certain human rights concerns, such as the situation of asylum seekers and people unlawfully present in the Netherlands. It is therefore not easy to enhance the credibility of human rights efforts of the Netherlands abroad. A first step could be that the human rights ambassador pays more attention to informing the Dutch public about the link between domestic and foreign human rights policy. Strengthening inter-departmental communication and consultation is another step towards improving the credibility of Dutch foreign human rights policy.

# 1

# Evaluation design

## 1.1 Background

The Universal Declaration on Human Rights (1948) and subsequent United Nations (UN) and regional conventions, declarations and resolutions urge governments to respect, protect and fulfil human rights, both domestically and in foreign relations. These instruments, whether or not they are legally binding, provide a broad framework to respect, protect and promote the fundamental rights and freedoms of all human beings. Despite this international human rights framework, implementation is still far from perfect. Many countries fail to safeguard human rights, or safeguard them inconsistently.

In recent decades, human rights have been an important component of Dutch foreign policy. This policy evaluation looks into the implementation of this human rights policy and the results obtained. It covers the period 2008-2013, during which EUR 324 million was spent on promoting human rights.[9] The evaluation has a thematic focus.

## 1.2 Goal of the policy evaluation and research questions

Box 1.1 summarises the goal and the principal research question of this policy evaluation.



**Box 1.1** *Goal and principal research question*

> The policy evaluation has a dual goal: ensuring accountability for the policy implemented and identifying issues for attention in future policy making.
>
> The question at the heart of the evaluation is: "Given the resources available and taking into account the circumstances under which policy implementation has taken place, to what extent have the efforts made by the Netherlands contributed to better respect for, and the protection and promotion of human rights?"

The research question has been elaborated into sub-questions, in accordance with the Ministry of Finance's template for a policy evaluation[10], which consists of three components: the policy's rationale and relevance; an overview of the instruments and expenditure; and an assessment of the policy's effectiveness. Policy coherence is not mentioned in the template, but is addressed in this policy evaluation.

9 The amount does not include expenditure on projects that may be related to human rights but are not labelled as such in the financial information system of the Ministry, e.g. projects promoting sexual and reproductive health and rights. Detailed information on expenditure is presented in Chapter 3.

10 Ministry of Finance, Order on Periodic Evaluation and Policy Information (known as RPE), Government Gazette 2012 no. 18352, 11 September 2012.

*Rationale for Dutch policy*

1) What was the rationale for adopting a human rights policy? Which changes were made in the period under review, and why?
2) On what basis were the priority themes chosen? Which goals were set for the different priorities?

*Policy implementation and expenditure*

3) Which actors at the Ministry of Foreign Affairs are involved in implementing this policy?
4) Which instruments have been used to support human rights defenders and promote freedom of expression, corporate social responsibility, women's rights and the rights of LGBT individuals? How were the countries selected? How was the mix of instruments and channels and countries chosen?
5) Which financial resources have been used to implement the human rights policy, and how were they allocated among different regions and channels in the period under review?[11]

*Effectiveness and coherence of policy implementation*

6) To what extent is the Dutch investment of human and financial resources in the priorities listed above coordinated with input from other actors, such as the EU member states and like-minded countries?
7) To what extent has the human rights policy been effective in achieving its objectives?
8) How coherent are the Dutch efforts on human rights priority themes with those in other policy areas?



## 1.3 Scope and methods

The evaluation focuses on human rights in Dutch foreign policy. Human rights policy relates to a wide range of themes, countries, forums and organisations. For logistical reasons it was necessary to be selective.

The evaluation covers the period 2008 to 2013, starting with the publication of the human rights strategy 'Human Dignity for All' in November 2007.[12] In order to place the period under review in a historical context, human rights policy in the preceding decades will be briefly summarised.

The evaluation does not address international legal order, gender, good governance, conflict prevention and regional stability because they have recently been or are being dealt with in other policy evaluations.

[11] Experience with evaluations of human rights projects shows that it is not possible to classify expenditures by theme without extensive investigation, because many activities relate to more than one theme.

[12] Ministry of Foreign Affairs 2007.

The policy evaluation has a thematic focus and includes five of the eight priority areas that were defined in the 2013 policy document:
- Human rights defenders (HRD).
- Equal rights for women.
- Equal rights for lesbians, gays, bisexuals and transgender people (LGBT).
- Freedom of expression and internet freedom.
- Business and human rights.

The first three themes were selected because they were a policy priority throughout the evaluation period; freedom of expression was selected because the Netherlands has championed its importance internationally, among others by organising a conference about internet freedom. Business and human rights was selected because the Netherlands supported the process of drafting the UN principles on this theme and because there are debates regularly in Parliament on business, trade and human rights.

The choice of a thematic approach is based on the thematic focus in Dutch human rights policy. However, it should be noted that there is often overlap and interrelation between the themes. Interventions may address several priority areas at the same time: for example, the freedom of expression of LGBT people or of women's human rights defenders. Secondly, information provided by respondents on Dutch human rights policy implementation is often not theme-specific. It was therefore decided to include a section on priority overarching themes in the chapter on policy implementation and results.



The policy evaluation largely builds on existing evaluations: seven country studies that were part of other recent IOB studies, an IOB policy evaluation of Dutch involvement in the CoE, two evaluations carried out by the European Commission and reports of the OHCHR. It also includes three assessments of OHCHR. The existing studies were complemented with two additional country studies (Morocco and Russia), an assessment of eleven projects with a worldwide or regional scope and information from interviews. Morocco and Russia were both selected because they are situated in regions that are hardly covered by the other evaluations and because they are important countries for the Netherlands. Russia and the Netherlands have close economic ties, while Morocco is important because a substantial part of the Dutch population is of Moroccan origin. In addition, both countries are important for geopolitical and security reasons. Together, the sub-studies cover the whole evaluation period, all the above-mentioned priority areas and a wide variety of instruments. However, it is to be noted that projects financed by the co-financing mechanism (MFS) have not been included in this evaluation.

The main data collection methods in this evaluation are document review and interviews. Respondents include a wide variety of actors, such as government representatives, staff of the OHCHR, NGO representatives, staff at the Dutch Ministry of Foreign Affairs (MFA), staff of the embassies of the Kingdom of the Netherlands in the countries included in the evaluation, staff of the Netherlands Permanent Representation (PR) to the UN in Geneva, as

well as staff from embassies and PR of other countries. In some cases, representatives of the envisaged beneficiaries were also interviewed. The document study included published reports and studies, parliamentary documentation, internal documents of the Ministry of Foreign Affairs and project documentation.

## 1.4 Evaluation criteria and issues

*Criteria*

**Relevance** relates to the extent to which Dutch human rights policy is responsive to urgent human rights concerns. It entails exploring the arguments for and consequences of the selection of priority areas and countries. Different groups, such as governments and NGOs, may have different views on what are urgent human rights concerns. In this evaluation, OHCHR and well-established international human rights NGOs are considered to be standard setters.

**Effectiveness** relates to the extent to which an activity attains its objectives. Regarding political efforts, the evaluation describes the efforts undertaken in the framework of the UN, the EU and bilaterally. It has also been described whether results have been obtained and which major factors contributed to the achievements or lack of achievements. If data is available, it is described whether the indicators relating to the priority themes have changed at country level.[13] The classification framework used for assessing project support is shown in Table 1.1.



**Table 1.1 Framework for assessing effectiveness of project support**

| Output (immediate results) | Outcome (medium-term results) | Score |
|---|---|---|
| Envisaged outputs realised fully or almost fully | Most of the envisaged outcomes were realised | Highly effective |
| Envisaged outputs realised fully or almost fully | Some of the envisaged outcomes were realised | Sufficiently effective |
| Envisaged outputs realised almost fully | Realisation of the envisaged outcomes could not be demonstrated | Moderately effective |
| Envisaged outputs realised insufficiently or not at all | Realisation of the envisaged outcomes could not be demonstrated | Not effective |

**Coherence** relates to the extent to which human rights policy objectives are supported – or undermined – by actions undertaken in other policy areas. This was assessed for two policy areas: international economic policy and domestic policy. Coherence also entails assessing whether other Dutch interests have promoted or impeded the human rights agenda.

[13] The major sources are OHCHR 2012 and reports of the US State Department, UK government and Amnesty International.

*Evaluation issues*
An evaluation in the field of human rights differs from evaluations in other policy areas. First and foremost, it deals with *sensitive issues* and with people working under difficult circumstances. Their privacy must be guaranteed, in order to avoid them being put at risk because of their participation in the evaluation. This implies that the sources of the findings be treated as confidential.[14]

With regard to the assessment of *effectiveness*, it should be taken into consideration that the political climate in a country may affect human rights independently, regardless of which efforts are made by any actors. It should also be taken into consideration that in addition to the legal obligation of the Dutch state there is also a moral obligation to respect, protect and fulfil human rights, even if it is not very likely that results will be obtained. Results may not be visible in the short term, but can contribute to creating conditions for future improvements.

In addition, efforts to combat human rights violations in one country may enhance the credibility of efforts taken elsewhere. An example of such an effort is calling an ally state to account, e.g. with regard to the death penalty in the United States. Finally, some activities are more likely to yield results than others. An example: it is easier to provide assistance to victims of human rights violations than to prevent these violations or to contribute to the prosecution of perpetrators. Addressing sensitive issues such as the rights of LGBT persons may not be acceptable for authorities and therefore may not lead to direct results, but may provide support or protection to the people concerned. In this evaluation all these factors have been taken into account and, as a consequence, in most cases the findings on effectiveness are worded in terms of *contributing to*.



Regarding *reliability*, efforts were made to triangulate information from interviews with documentation, but in some instances, e.g. negotiations on human rights resolutions, this was not possible because not all steps in the negotiation process are documented. In this evaluation, all statements are based on information from at least two respondents from different backgrounds. When information could not be triangulated with documents, this is explicitly mentioned.

With regard to *representativeness*, by combining existing studies and evaluations, the two additional country studies, document review and information from respondents, the evaluation provides a good illustration of Dutch external human rights policy. Given the variety of themes and the differences between countries and forums, the results for one country or forum cannot be extrapolated to other ones. Anecdotal examples of Dutch involvement – or lack of involvement – in human rights from countries that are not included in the evaluation have not been used to justify conclusions drawn but may have

[14] Names of respondents and details on projects will not be provided. Some exceptions have been made (the examples in the boxes) with the approval of respondents or implementing organisation, in order to illustrate the findings.

been considered when reaching conclusions. The evaluation covers six years during which there were fifteen regular sessions of the Human Rights Council. Particular attention has been given to the sessions with important – and fiercely debated – resolutions regarding the priority themes over the last two years. Regarding the country level, although the evaluation team made an effort to report on the important Dutch interventions in the field of human rights in the countries under review, some information will have inevitably been missed.

## 1.5 Outline of the report

Chapter 2 describes the rationale for Dutch government's involvement in human rights and summarises Dutch human rights policy. Chapter 3 deals with policy implementation, focusing on actors, instruments and expenditure. Chapter 4 presents the results regarding the five themes on which the evaluation focuses, and includes a section on broader human rights involvement of the Netherlands. In Chapter 5 the coherence between human rights policy and other policy areas is assessed. Chapter 6 starts with a summary of the findings, followed by a critical review of policy development, effectiveness and policy coherence. The chapter ends with an overall conclusion of the evaluation.



2

# Policy development

This chapter presents the rationale for Dutch involvement in human rights at the international level and describes the policy environment. It also summarises EU human rights policy and Dutch foreign human rights policy. A critical review of Dutch policy development will be presented in the final chapter.

## 2.1 Introduction

Human rights have been at the core of Dutch foreign policy for decades. The Netherlands was one of the first countries to explicitly formulate its objectives in the field of human rights. In 1979, the government issued its first extensive human rights policy.[15] For more than two decades this human rights policy document served as the guidance for policy implementation and the Netherlands was considered a torch-bearer in the advancement of human rights. In 2001 the government issued a new policy document responding to new developments, such as the end of the Cold War and the changing character of conflicts. A previous policy evaluation covering the period 2001-2005 concluded that the Netherlands had a high human rights profile, but that implementation lagged behind when efforts in the area of human rights conflicted with other interests. Critical remarks were also made about the integration of human rights in other policy areas and with respect to the adequacy of project design.[16]



## 2.2 Rationale for the Dutch government's involvement in human rights

Since the 1970s, the Netherlands has come to think of itself as a 'guiding nation' (gidsland) regarding the promotion of human rights on the world stage. Both moral and market-related reasons underlie this self-assumed role.[17]

The Dutch Constitution (article 90) states that the government promotes the development of the international legal order. The Netherlands is party to most human rights treaties and has supported numerous resolutions and declarations relating to specific thematic areas. Therefore the Netherlands is expected to contribute to the implementation of these treaties and non-legally binding instruments, both domestically and in the framework of the UN, regional forums and bilaterally. As the Netherlands is a member state of the UN, the Council

[15] TK 1978-79, 15571, nrs. 1-2. In the period after 1979, several progress reports and thematic policy papers were published. See Policy and Operations Evaluation Department 2006.

[16] Policy and Operations Evaluation Department 2006.

[17] Oomen 2014. The term 'gidsland' was first used in the context of foreign policy in 1973 by politician de Gaay Fortman, and continued to circulate. Next to an 'internationalist idealist' tradition, developing the international legal order was also 'in line with Dutch self-interest', because as a small country with large trade earnings, it stood to benefit from international regulations intended to protect the interests of smaller countries.

of Europe (CoE) and the EU, the government is committed to promoting human rights in its foreign relations (see 2.4 below). Government's involvement in human rights is also influenced by Parliament, often at the direct behest of civil society and organisations that may provide information on specific abuses.

## 2.3 Policy environment

Over the last three decades significant progress has been made in the international human rights architecture, including the establishment of internationally agreed human rights standards and mechanisms to monitor their implementation. The acceptance and use of human rights language has increased, among both policy makers and political activists. Human rights were initially limited to the domain of Western powers, whereas now 'they are promoted in the streets of Kolkata and Kampala'.[18] In addition, international institutions such as the World Bank have come to realise that fighting endemic poverty, illiteracy and corruption can best be done in conjunction with development assistance and the pursuit of human rights objectives.[19]



On the other hand, as a consequence of changes in the international landscape and resurgent religious fundamentalism, the concept of universal human rights and the human rights architecture have been challenged. An important factor in the international human rights arena is the rise of new economies, most notably the so-called BRICS countries (Brazil, Russia, India, China and South Africa) and also Indonesia, Mexico, Nigeria and Turkey. Some of these countries, e.g. Russia and China, promote traditional values that conflict with human rights standards. In addition, the existing human rights infrastructure is challenged for failing to provide an adequate answer to serious human rights violations, such as those committed in the conflicts in Sudan or Syria. In a recent publication, Hopgood even foresees the 'endtimes of human rights' and suggests that human rights could be realised without the human rights architecture[20]. His views have given rise to fierce debate, but consensus exists about the fact that the international order has changed and that this has influenced the human rights debate.[21]

[18] Oomen 2014: 3-4.

[19] Buergenthal et al. 2009: 27-28.

[20] Stephen Hopgood, '*The Endtimes of Human Rights*', in: Lettinga & Van Troost 2014, pp. 11-18.

[21] Lettinga & Van Troost 2014. Several authors have reacted to Hopgood's article on the endtimes of human rights.

## 2.4 Human rights policy

*EU policy*

Created as an economic project, until the late 1980s the European Community promoted human rights merely through diplomacy and declarations. In 1993, with the Maastricht Treaty and the foundation of the EU, a political and institutional framework was established in which the status of human rights in external relations was upgraded and enshrined in law. The EU gradually developed a normative and institutional architecture for dealing with human rights in its external relations, including EU HR guidelines for a number of themes, such as HRD and freedom from torture.

The Lisbon Treaty (2009) reiterates that the EU is founded on the values of '....respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities….'[22]. The treaty established the Charter of Fundamental Rights as legally binding, as it is accorded the same legal validity as the EU treaties. The treaty states that the EU is to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[23] In order to make this accession possible, a draft accession treaty has been negotiated between the EU and the CoE. These negotiations took place within the framework of the Steering Committee for Human Rights (CDDH) and the Netherlands has been actively involved from the outset. In April 2013 the negotiations were concluded with the adoption, at negotiator's level, of a draft text. On 18 December 2014, however, the Court of Justice of the European Union gave a very critical opinion on the draft, which may potentially stall the process for a considerable period. Monitoring of human rights issues within EU member states is hardly addressed in the Lisbon Treaty.[24]



Treaties with third countries concerning development cooperation and other agreements, such as partnership and association agreements, contain 'essential' clauses regarding human rights, implying that the EU can cancel the treaty or agreement unilaterally if the other party is guilty of serious human rights violations.

In 2012, the EU Strategic Framework and Action Plan on Human Rights and Democracy was adopted. It is considered a firm political commitment to human rights in the EU's foreign policy.[25] It proclaims a belief in universal values and asserts that human rights will be placed 'at the centre of the relations with all third countries' and 'promoted in all areas of its external action without exception'. The action plan comprises 36 outcomes which are broadly defined and therefore, it will be difficult to grasp their achievement.

22 Article 2.
23 AIV 2011: 11-12 provides a more detailed description of the relevant articles of the Treaty of Lisbon.
24 De Burca 2011. The author argues that in 1950 the model for the constitutional framework provided for monitoring and even intervention with regard to human rights in member states. The 1957 treaty, however, was silent on human rights.
25 EU 2012.

*Dutch policy*

Late 2007, after intensive consultations with civil society organisations, the Dutch government issued the human rights strategy '*Human dignity for all*'.[26] It has an ambitious goal: protecting and promoting human rights worldwide. In the view of the government in office at that time, the observance of human rights contributes to both domestic and international security and socio-economic development. The strategy defines four key principles: universalism; human rights, peace and security; indivisibility of human rights; and giving a voice to those who defend human rights. For each important human rights forum, such as the UN and the CoE, a strategic approach is defined, either in general terms or in more specific wording. The document also contains a strategic approach for six priority areas: abolishment of the death penalty; preventing and combating torture; freedom of religion and protection of religious minorities; women's rights; children's rights; and combating discrimination against homosexuals. Some strategic efforts are broadly defined: for example, ensuring that 'freedom of expression will receive more attention in the UN Human Rights Council'. Others are specific: for example, the organisation of a conference on violence against girls. The strategy includes the establishment of a Human Rights Fund (HRF), open to applications from all countries except partner countries receiving development aid.



End of 2010, a new government based on a different political coalition was installed. In line with the changed political élan, the 2011 update of the human rights strategy focuses specifically on aspects of human rights where freedom, security and prosperity are mutually reinforcing.[27] Special attention is devoted to promoting freedom of expression and internet freedom as a means of boosting democratisation, particularly in the Arab world. Other priorities include freedom of religion and belief, and freedom from discrimination on the grounds of sexual orientation and of gender identity. The need for policy effectiveness is emphasised, and to this end a strong plea is made for more selectivity and cooperation with others. Initiatives of like-minded countries will be supported and initiatives of the Netherlands will be limited to situations where the Netherlands has specific expertise and can provide added value. The motto was: working in the multilateral framework where possible and bilaterally where necessary. Publicly and loudly criticising governments ('megaphone diplomacy') was to be avoided as much as possible. The 2011 update does not mention specific goals or targets. In contrast to the previous period, the HRF became available for only a limited number (57) of countries, and in 2012 a further reduction was announced.[28] It was argued that focusing on fewer countries would avoid fragmentation and enhance the effectiveness of the projects.

In 2013, again after a change in government and in the political parties in power, a new human rights policy was published. In the 2013 policy document, 'Justice and respect for all', it is emphasised that universal human values are the point of departure on which the

[26] Ministry of Foreign Affairs 2007.

[27] Ministry of Foreign Affairs 2011b.

[28] TK 2012-2013, 23735, nr. 82.

efforts will be based and that defending human rights is a moral and legal obligation.[29] The policy document, partly developed using an interactive online consultation programme, is much more ambitious than the 2011 update. The policy priorities, which are mostly in line with those of the two preceding strategies, are HRD, equal rights for LGBT people and for women, most flagrant violations, freedom of expression and internet, freedom of religion and belief, human rights and development, and business and human rights. It is defined what will be done regarding the priority themes and, though less frequently, the envisaged achievements. The number of countries that can make use of the HRF is reduced to 48.[30] Responding to a changing policy environment, the strategy outlines three approaches: trilateral cooperation, also with non-Western partners, internet innovation, and more attention for integrating economic, social and cultural rights and civil and political rights. The 2013 policy introduces the concept of *credibility*, implying that the Netherlands must assess the merits of recommendations or criticism from international organisations and supervisory bodies, and where necessary be prepared to make changes.



29 Ministry of Foreign Affairs 2013.
30 TK 2012-2013, 23735, nr. 82.



3

UN Human Rights Council Geneva (2014)

# Institutional framework, instruments and expenditure

This chapter starts with a succinct overview of different human rights forums and of Dutch participation in them. The role of the Office of the High Commissioner for Human Rights (OHCHR) will also be described. Next, this chapter will describe the actors at the Ministry of Foreign Affairs (MFA) who are involved in policy implementation, and will give an overview of available instruments and data on expenditure. The application of these instruments and the results will be presented in Chapter 4.

## 3.1 Human rights forums

This section describes, albeit non-exhaustively, the most important UN and regional human rights forums. It also provides a brief description of the work of the leading UN agency for human rights, the OHCHR.

*UN*

The UN General Assembly allocates to its Social, Humanitarian and Cultural Affairs Committee, commonly referred to as the '*Third Committee*', agenda items relating to a range of social, humanitarian affairs and human rights issues that affect people all over the world.[31] The Netherlands usually operates in the framework of the EU and like-minded non-EU countries. It seeks to keep sensitive issues on the agenda and to safeguard that the wording in resolutions is in line with internationally agreed human rights standards.



The Human Rights Council (HRC) was established by a 2006 resolution of the UN General Assembly and replaced the Human Rights Commission.[32] The HRC is an inter-governmental body within the UN system, responsible for strengthening the promotion and protection of human rights and for addressing human rights violations and making recommendations on them. It comprises 47 UN member states, elected by the UN General Assembly. During the period of evaluation, up until June 2010, the Netherlands was a member of the HRC; thereafter it was an observer.[33] As noted above, the Netherlands operates in the framework of the EU and seeks to cooperate with like-minded countries and to bridge gaps between like-minded and less like-minded countries.

The HRC has adopted the following procedures and mechanisms to guide its work: the advisory committee, serving as a think tank; a complaints procedure, enabling individuals and organisations to bring alleged gross and systematic violations to the attention of the HRC; and the UPR. The Netherlands operates on its own in the UPR process. It attends all meetings and for all countries raises questions and prepares a limited number of concrete recommendations. The HRC also works with special procedures. These are independent

31 http://www.un.org/en/ga/third/index.shtml. The Committee's work includes examining reports on the special procedures of the Human Rights Council (HRC). Each UN member state can be represented at the sessions of the Third Committee.

32 http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx.

33 October 2014, the Netherland was again elected as HRC member (period 2015-2017).

human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. There are 37 thematic and 14 country mandates.

The OHCHR is the leading and coordinating UN organisation on human rights, mandated by the UN General Assembly to promote and protect all human rights.[34] OHCHR is headed by the High Commissioner for Human Rights. The office's work encompasses standard-setting, monitoring and implementation. OHCHR has four programmes of work: 1) human rights mainstreaming, right to development, research and analysis; 2) support to the human rights treaty bodies; 3) advisory services and technical cooperation; and 4) support to the HRC and its special procedures. OHCHR has defined six priority areas: discrimination; impunity, rule of law and democratic society; poverty and economic, social and cultural rights; migration; violence and insecurity; and human rights mechanisms.

Expenditure in 2013 was USD 220 million.[35] Over the period of evaluation the Netherlands was among the lead providers of voluntary extra-budgetary contributions: mostly core funding (in the period 2008-2013 totalling about EUR 50 million). Occasionally, extra-budgetary funds are earmarked, such as for the establishment of a country office in Tunis (2010). An important part (20% of the total OHCHR budget and 45% of the budget for the four programmes of work) is used for enabling the work of the UN human rights treaty bodies, the HRC and the special procedures (programmes of work 2 and 4). The special procedures with regard to the priority areas of this evaluation, as well as a general assessment of OHCHR, will be presented in Chapter 4.



*Regional: CoE, OSCE, other forums*

The *Council of Europe (CoE)* is a regional inter-governmental organisation with 47 member states, established in 1949 to safeguard democracy and to prevent war and new forms of totalitarianism. Its main priorities are human rights, democracy and the rule of law. The decision-making organ of the CoE is the Committee of Ministers, in which the Netherlands is represented by the Permanent Representative to the CoE. Decisions are prepared in working groups in which both member states and the CoE secretariat participate.[36] The Netherlands provides extra-budgetary financial support to CoE programmes.

In the area of human rights, the primary structure of the CoE is the Steering Committtte for Human Rights (CDDH), which prepares conventions, protocols, guidelines, recommendations, resolutions, commentaries, manuals and guides to good practice.

34 http://www.ohchr.org. Its headquarters are in Geneva and OHCHR has field presence in 58 countries, including 13 country/stand-alone offices, 14 human rights components in peacekeeping missions and special political missions, 12 regional offices and centres, and 19 human rights advisors operating with United Nations Resident Coordinators and country teams.

35 http://www2.ohchr.org/english/ohchrreport2011/web_version/media/pdf/0_OMP_2012-13_whole_Report.pdf; http://www2.ohchr.org/english/OHCHRReport2013/WEB_version/allegati/11_Fianancial_Statements.pdf. Voluntary contributions accounted for 58% of expenditure.

36 http://www.coe.org; http://www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG; Chairmanship rotates; during the period of evaluation the Netherlands did not chair the CoE.

Examples pertaining to the priority areas, in the preparation of which the Netherlands was actively involved, include the Declaration on human rights defenders and the Resolution on the rights of LGBT, both instruments adopted by the Committee of Ministers in 2008 and 2010 respectively. CDDH is also the forum in which negotiations take place on the accession of the EU to the ECHR. CDDH meets twice a year and has a number of permanent and temporary sub-structures. Since the work has a strong legal character, the Netherlands is represented in the meetings of the Steering Committee by a representative from the International Law Division of the MFA. In subordinate groups, others participate as well, including DMM/MP and representatives from other ministries.

The CoE Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1953) provided for the establishment of the European Court of Human Rights (ECtHR). It is a supranational court that hears applications alleging human rights violations and its jurisdiction is recognised by all 47 CoE members. One of the essential functions of the Committee of Ministers of the CoE is the supervision of ECtHR judgments pursuant to the ECHR. In doing so, the Committee adopts resolutions urging the member states to take certain measures in order to comply with the judgments. In 1999, the function of Human Rights Commissioner was established: an independent institution within the CoE, mandated to promote the awareness of and respect for human rights. CoE also has a system of mechanisms mandated to monitor the implementation of treaties and to provide assistance for improvement.[37]



The *Organization for Security and Co-operation in Europe (OSCE)* has its origins in a series of conferences aimed at promoting the dialogue between the then East and West. After the Cold War, these conferences were institutionalised, by establishing the OSCE (1994). Participating in the OSCE are 57 states from Europe, Asia and North America. The organisation has a broad mandate, including the monitoring of human rights in participating states.[38] The Permanent Council is the main decision-making body; the Netherlands is represented in this council by the Permanent Representative to the OSCE. One of the OSCE's institutions and structures is the Office for Democratic Institutions and Human Rights (ODIHR), which works in the field of election observation, democratic development, human rights, tolerance and non-discrimination, and the rule of law. The Netherlands provides support to ODIHR, both financially and by providing Dutch experts.

37 They can be treaty-based, such as the Committee to Prevent Torture, or based on a Committee of Ministers' resolution, such as the European Commission against Racism and Intolerance.

38 http://www.osce.org/who. OSCE operates in three 'dimensions:' the politico-military; the economic and environmental; and the human. Chairmanship rotates, but during the period of evaluation the Netherlands did not chair the OSCE.

Other regional forums include the *African Commission on Human and Peoples' Rights* (ACHPR)[39], the *Inter-American Commission on Human Rights* (IACHR)[40] and the recently (2009) established *ASEAN Inter-governmental Commission on Human Rights* (AICHR)[41]. The Netherlands provides financial support for the functioning of the ACHPR and the IACHR.

*Regional: EU*

Since the Lisbon treaty has become effective, the role of the EU regarding human rights implementation has increased in relation to member states' responsibilities: for example, with respect to human rights dialogues. In November 2009, Catherine Ashton was appointed as the EU's first High Representative of the Union for Foreign Affairs and Security Policy, and in 2012, Stavros Lambrinidis became the first EU Special Representative for Human Rights. The EU External Action Service (EEAS) has two thematic human rights desks: one for strategy and policy implementation and one for multilateral diplomacy. The Netherlands has regularly provided personnel to these teams. Regional desks are also involved in human rights, most notably in the preparation of human rights dialogues. The EEAS chairs and hosts the secretariat of the Human Rights Working Group (COHOM), resorting under the Council of the EU.



COHOM is responsible for human rights issues in the EU's external relations and covers various aspects of EU's human rights policy, such as international forums, dialogues with third countries, thematic issues and mainstreaming. It is composed of human rights experts from member states and the European Commission and meets regularly, at least once a month. The Netherlands participates in the meetings with a representative from the Human Rights division of the MFA and from the PR to the EU. Urgent human rights issues are always discussed under a separate agenda item. For specific issues, such as drafting or revising guidelines, task forces are established. These are open to all member states and participation is voluntary. In addition to COHOM, human rights violations in specific countries are discussed in the regional EU Working Groups.

EU delegations in third countries are in charge of external action regarding human rights. They are tasked with drawing up their own three-year human rights country strategy and identifying priorities. These strategies are not publicly available, although the Netherlands has asked for it. Member states and the EU can take the initiative to act to implement this strategy and to react to human rights violations. EU démarches are coordinated and approved by member states. In countries with severe human rights problems, human rights are on the agenda of the regular meeting of EEAS and the Heads of Missions of member states. Human rights working groups, with participation of EEAS, member states and sometimes also other like-minded countries, are involved in the process of preparing EU

39 http://www.achpr.org/about/history. Members are selected by the Assembly of the African Union from experts nominated by the State Parties to the Charter.

40 http://www.oas.org/en/iachr. ACHR's work rests on three pillars: the individual petition system; monitoring of the human rights situation in the Member States, and the attention devoted to priority thematic areas.

41 http://aichr.org/.

action regarding human rights. These groups are also involved in the preparation of human rights dialogues and consultations, and the preparation of EU reporting. In countries where the Netherlands has an embassy, it participates in these working groups.

In 2006, the European Instrument for Democracy and Human Rights (EIDHR) was launched, with the purpose of supporting the development and consolidation of democracy and the rule of law in third countries.[42] The budget for 2007-2013 is EUR 1.1 billion. Given the Dutch contribution to the EU budget of roughly five percent, the Netherlands contributed an estimated EUR 55 million.

## 3.2 MFA actors involved in Dutch policy implementation

Staff from the MFA in The Hague, at Dutch foreign representations, as well as staff from other ministries, are fully or partially involved in the development and implementation of human rights policy. NGOs and other non-state actors also have an important role in both the drafting and the implementation of human rights policy. In this section, only the actors at the MFA will be discussed. Below, the role of MFA staff in The Hague, PR and embassies and the division of work between them are briefly described.



In 1999 the position of human rights ambassador (HRA) was established. The ambassador is mandated to visit countries in order to discuss human rights issues, to maintain contacts with civil society in the Netherlands and in other countries and to promote the integration of human rights in foreign policy, including development cooperation.[43]

Since 2012, the Human Rights and Political and Legal Affairs Division (DMM/MP) has been the focal point for human rights policy development and implementation, under the aegis of the Multilateral Organisations and Human Rights Department (DMM). Prior to 2012 the institutional positioning was different: there was a division that dealt solely with human rights, resorting under the department for Human Rights, Emancipation, Good Governance and Humanitarian Aid. The transfer to the UN department was accompanied by a drastic reduction of staff, but staff numbers have since somewhat recovered.

At the time of writing (2014), nineteen staff members were employed at DMM/MP, twelve of whom were mostly involved in human rights policy. DMM/MP coordinates the Dutch contribution in UN human rights forums and specialised agencies, participates in

[42] Projects are selected through a 'call for proposals' with a minimum project budget of EUR 500,000. Small human rights organisations may not be able to absorb such a large budget and/or to cope with the administrative procedures. EIDHR includes a facility for urgent action without the procedure of a call for proposals.

[43] The five consecutive human rights ambassadors: Renée Jones-Bos (1999-2003), Piet de Klerk (2003-2007), Arjan Hamburger (2007-2010), Lionel Veer (2010-2014) and Kees van Baar (from September 2014 onwards). The Netherlands was one of the first countries in Europe to appoint a human rights ambassador.

COHOM[44], chairs interdepartmental consultations on human rights and maintains links with regional desks, embassies and civil society organisations. It has a coordinating role regarding expenditure through the HRF and is responsible for awarding HRF funding for worldwide and regional projects and their management.

The International Law Division of the Legal Affairs Department includes a unit of six staff members responsible for human rights issues. The unit operates, first of all, as the office of the Government Agent to the ECtHR and other international human rights complaints procedures. A corollary of that responsibility is the preparation, on behalf of the Minister, of an annual report to parliament on the position of the Netherlands in those procedures. The unit is also tasked with the coordination of the reports of the Kingdom of the Netherlands to the UN Treaty-bodies and under the UPR. As stated above, it participates in the Steering Committee for Human Rights of the CoE. Finally, it provides legal advice in the area of human rights to the Ministers, the human rights ambassador, DMM/MP, other relevant divisions within the MFA and other ministries. In this evaluation, some aspects of the work of the International Law Division are described, but not assessed.

Country desk officers at the regional departments follow developments in human rights, provide input for the Dutch contribution to UN forums and coordinate the Dutch contribution to regional forums, such as the CoE. They also prepare and participate in country visits of the human rights ambassador. Together with embassies and DMM/MP, they coordinate human rights dialogues or consultations on and reactions to specific human rights violations. Figures for exact numbers of persons and hours spent on human rights at the regional desks cannot be provided, because human rights is just one of the various responsibilities of the staff. Staff from other departments are also involved in human rights policy implementation: for example, promoting gender equality or corporate social responsibility.[45]



Staff at PRs prepare and participate in international or regional human rights assemblies and maintain contact with relevant human rights organisations. Staff at embassies are involved in human rights policy implementation at country level in various ways: providing information on the human rights situation to the ministry in The Hague; providing input for the Dutch participation in UN and other HR forums, participation in EU Head of Mission consultations and human rights expert groups; preparing EU démarches or public statements; bilateral silent diplomacy[46]; public diplomacy, maintaining contact with human rights organisations and participation in events; trial observations; selection of projects

44 The level of participation has changed. At present, two staff members (DMM and PR Brussels) participate. Previously, the Netherlands was represented by the head of the Human Rights division of the MFA.

45 Promoting gender equality and sexual and reproductive health and rights is among the major responsibilities of the Social Development Department. The Directorate-General for Foreign Economic Relations is involved in corporate social responsibility issues.

46 We use the term ‘silent diplomacy’ instead of the official term ‘quiet diplomacy’, because this is the common term at MFA.

eligible for human rights funding and follow-up of the implementation. In this latter task, Dutch embassy staff is usually assisted by local staff members.

Although it is not possible to quantify the number of staff and hours involved in human rights at PRs and embassies, it can be concluded that in New York, Geneva, Strasbourg, Brussels and in countries with severe human right issues, involvement in human rights is a substantial part of the staff's duties. In several countries under review, the number of embassy staff involved in human rights was limited, given the human rights situation. This should be justifiable, in view of the EU delegation's increased responsibility for the implementation of human rights policy. However, the increased EU responsibility has not always been accompanied by the necessary human rights expertise.[47]

## 3.3 Instruments

Table 3.1 presents a non-exhaustive overview of instruments that the Netherlands has at some time or other applied for policy implementation. In global and regional forums, including the EU, the choice of instruments is mostly related to agreements for the division of work. At country level, the choice of instruments varies. It is first and foremost related to the political ambience and the human rights theme that is addressed. In some situations it may be very productive to express concerns publicly, while in other instances it may be more effective to voice these concerns behind the scenes. The choice of instruments is also related to the country strategy and actions of the EU, the personal commitment to human rights among embassy staff and the availability of implementing organisations.



[47] Policy and Operations Evaluation Department 2013b.

| Table 3.1 | Instruments applied for policy implementation |
|---|---|
| **Forum/channel** | **Instrument** |
| **Multilateral/regional** | Dialogue, negotiation and interventions in global or regional forums, including contributions to the UPR process.<br>Voluntary financial contribution to international or regional organisations such as the OHCHR.<br>Treaty obligations.<br>Supervision of the execution of the ECtHR judgments by the Committee of Ministers at the CoE. |
| **EU** | Involvement in the drafting of policy documents and guidelines.<br>Involvement in preparing EU interventions in international forums.<br>Participation in preparatory processes regarding bilateral human rights strategies; human rights consultations and dialogues; inclusion of human rights clauses in trade and association agreements. |
| **Bilateral** | Participation in preparing EU actions: démarches, public statements, dialogues and silent diplomacy.<br>Bilateral interventions: dialogues, démarches, public statements and silent diplomacy.<br>Opening up discussion on human rights during inward and outward visits and trade missions.<br>Visits of the Human Rights Ambassador.<br>Supporting human rights projects.<br>Public diplomacy, through social media or, for example, participation in gay prides.<br>Maintaining contacts with human rights organisations.<br>Meetings with companies on business and human rights. |
| **Other** | Financing global or regional human rights projects.<br>Dialogue with international and Dutch human rights organisations. |

*Sources: based on Budget 2008 and 2013. Ministry of Foreign Affairs 2013.*



The application and results of these instruments with regard to the five priority themes will be presented in the next chapter. Chapter 4 will conclude with a general impression of the overall performance of the Netherlands in terms of safeguarding human rights.

## 3.4 Expenditure

This section presents data on budget items pertaining to article 1 (2) of the Explanatory Memorandum (MvT) to the Ministry of Foreign Affairs Budget, entitled 'protection of human rights'. It also presents data on funding of human rights projects that fall under other Budget articles.[48] It should be noted that projects related to human rights may be

[48] SBEs: 0410S02, 0430S00, 0612S02, 1997S00, 1312S00. The Creditor Reporting System of DAC/OECD has been used. All projects with code 15160 (Human rights) and 15153 (Media and free flow of information) have been included.

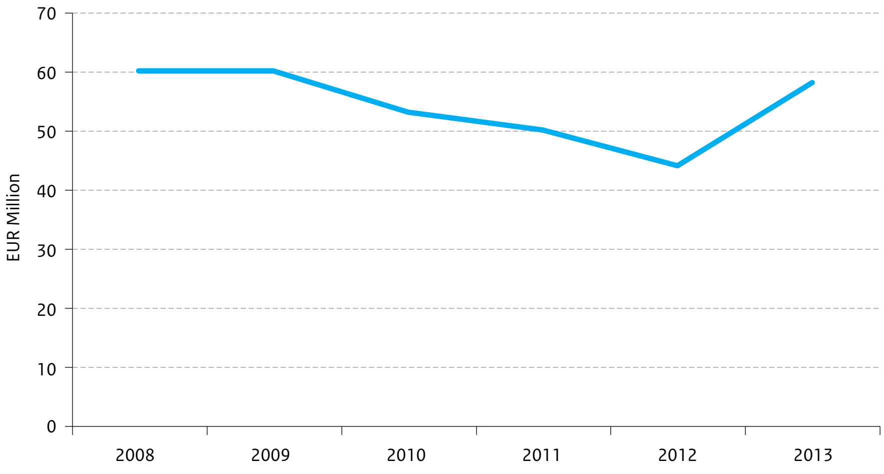
excluded because they have been registered differently, for example under the codes of reproductive health or legislation.

Over the period 2008-2013, total expenditure on budget items under 'promoting human rights' plus human rights projects financed through other budget lines was EUR 324 million. Funds were allocated to a total of 1274 projects, ranging from very small projects with a budget of less than a thousand EUR to extensive projects with a budget of EUR one million or more. Total expenditure includes the extra-budgetary core support to the OHCHR (about EUR 50 million), the support to Radio Netherlands Worldwide (RNW, 13.5 million), the HRF and projects registered under the codes for 'human rights' or 'media freedom' in the reporting system.[49]

In 2008 and 2009 the actual annual expenditure was about EUR 60 million, but thereafter there was a steady decline, to EUR 43 million in 2012. In 2013 there was an increase, almost to the 2008-2009 level, but it should be noted that the 2013 expenditure includes a substantial contribution to RNW. Excluding this contribution, actual expenditures in 2012 and 2013 are similar.

**Figure 3.1** *Dutch government expenditure on human rights projects 2008-2013*



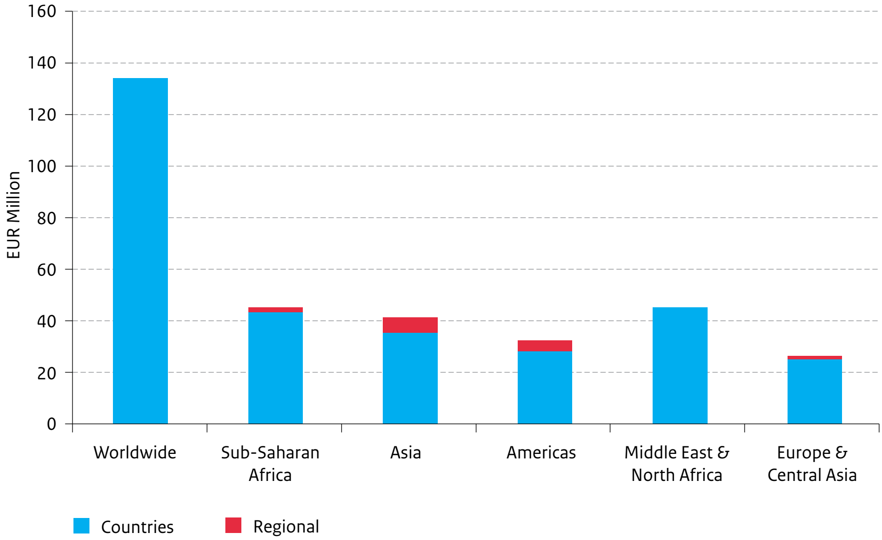



*Source: MFA financial administration system.*

[49] Gender equality and women's empowerment have not been included because funding for these activities will be covered in an upcoming evaluation.

During the period under review, about 42% of total expenditure was allocated to projects with a multi-country focus, here labelled as worldwide (EUR 135.6 million). When core contributions to OHCHR and RNW are excluded, the percentage falls to 23%. Figure 3.2 shows how expenditure was distributed over the regions. The figure shows that a relatively large amount was allocated to the Middle East and North Africa, including Iran. The Americas include the US, where six projects were implemented, with a total expenditure of about EUR one million. The Americas plus Europe and Central Asia account for a substantial share of the expenditure. Recently (see section 2.4) the number of eligible countries in these regions has been reduced substantially.

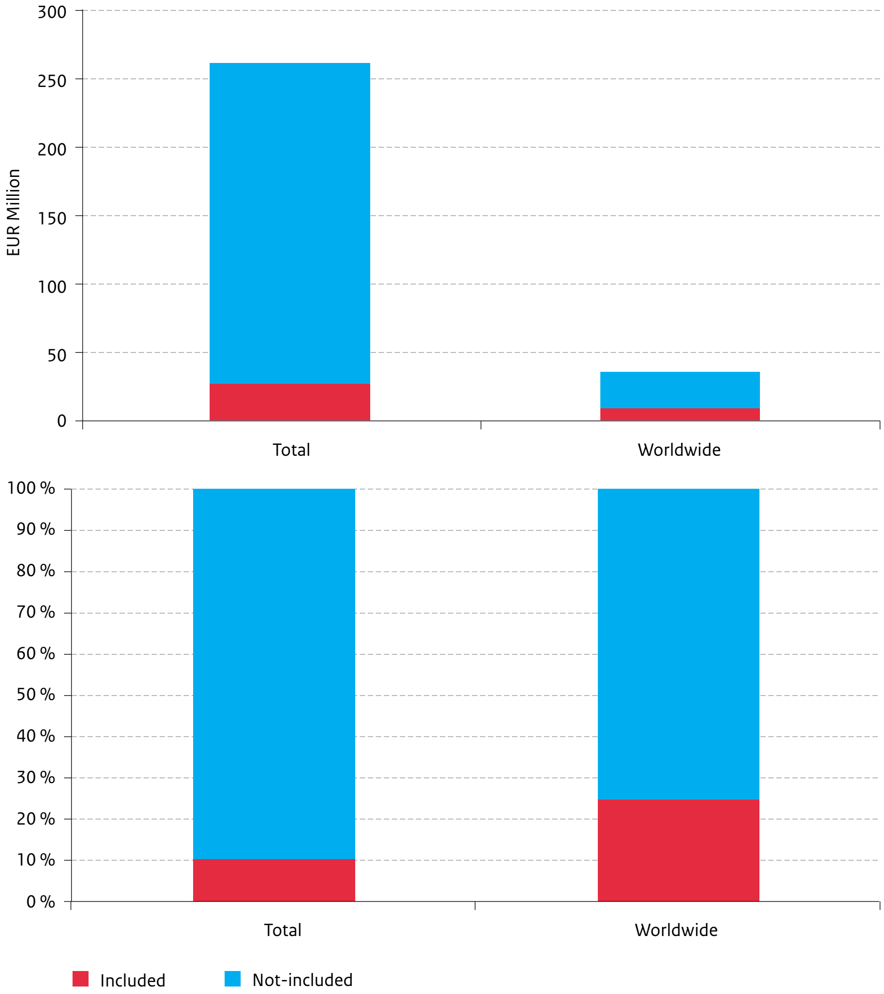
**Figure 3.2** *Expenditure by the Dutch government on human rights projects 2008-2013: distribution among regions*




*Source: MFA financial administration system.*

Figure 3.3 shows which part of total expenditure, excluding core funding of OHCHR and RNW, has been covered by the evaluation.[50] It can be seen that about 10 percent of total expenditure and almost a quarter of worldwide expenditure has been included in the evaluation.

**Figure 3.3** *Evaluation coverage of overall expenditure and of expenditure on worldwide projects*



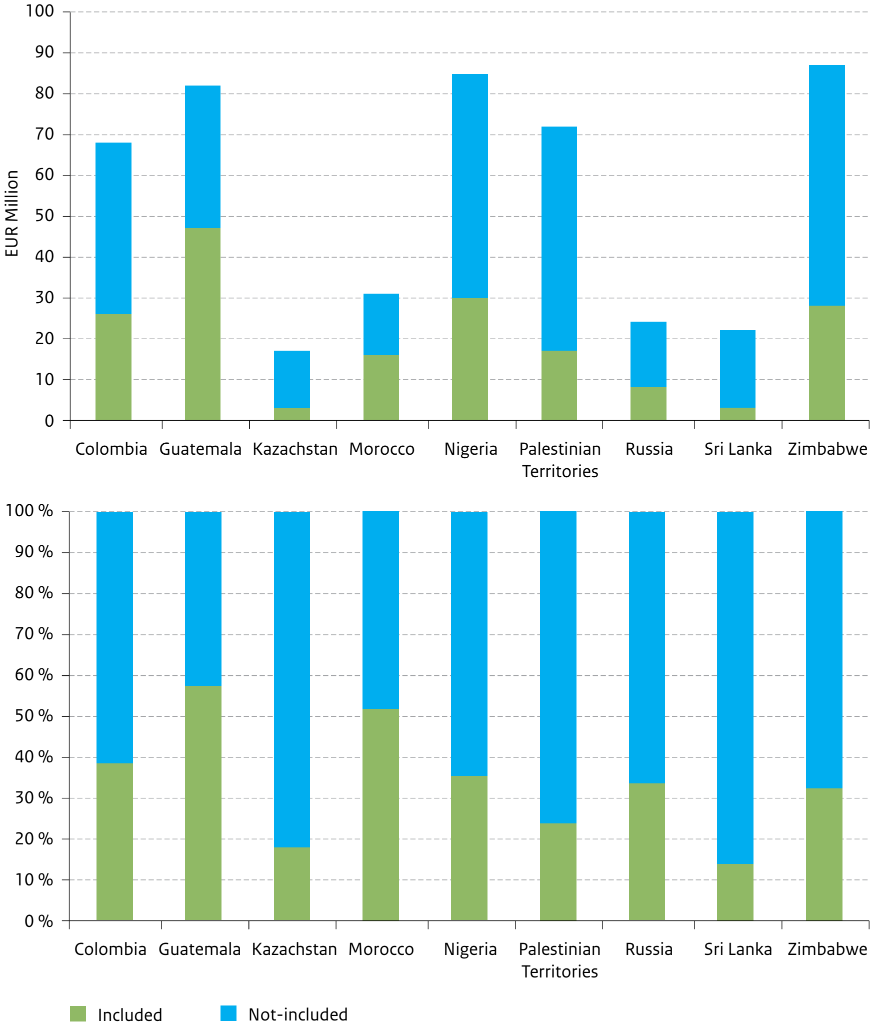

*Source: MFA financial administration system.*



[50] It was decided to exclude RNW and core funding to OHCHR in order not to under- or overestimate coverage. OHCHR has been partially covered and RNW appeared in the Budget only in 2013 and will be evaluated at a later stage.

For the nine countries under review, coverage is higher: about 35% of total expenditure has been evaluated (Figure 3.4). The figure also shows the differences in coverage between the countries. These can be explained by the type of project portfolio. In the case of numerous small projects, as in Sri Lanka, only a small proportion of the projects have been included because it would have been too time-consuming and costly to evaluate all projects.

**Figure 3.4** *Evaluation coverage of projects in the nine countries under review*




*Source: MFA financial administration system.*




4

Silent protest for missing human rights defenders, Colombo, Sri Lanka (2012)

# Policy implementation and results regarding priority areas

This chapter describes the instruments applied and assesses to what extent Dutch efforts have contributed to creating conditions for better promotion and protection of human rights. It addresses Dutch involvement in the five priority areas selected for this evaluation, both within the framework of the UN and at country level.[51] At country level, a distinction will be made between involvement within the framework of the EU and bilateral involvement.

Three of the priority areas (HR defenders, women and LGBT) relate to individuals or groups who are confronted with serious human rights violations. The fourth area, freedom of expression, relates to a fundamental right, established in, among others, article 19 of the International Covenant on Civil and Political Rights (ICCPR). The fifth theme, human rights and business, is a broader issue that highlights the role of non-state actors, whereas international human rights law is to a great extent framed in relation to the actions – or lack thereof – and obligations of States.

It should be taken into consideration that the priority areas are interrelated. For example, LGBT persons may be at an increased risk of a violation of their right to freedom of expression. In addition, the term human rights defender covers a wide variety of activists working in various human rights areas, including equal rights for women and LGBT.



## 4.1 Human rights defenders

*Background*

Human rights defenders (HRD) are persons who, individually or in groups, act through peaceful and non-violent means to promote and protect human rights. Their work includes documenting violations, seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support, and combating cultures of impunity. In many countries HRD encounter a number of impediments to carrying out their work, including torture, ill-treatment, arbitrary detention, administrative and judicial harassment and, more generally, stigmatisation by both state and non-state actors.[52] Organisations that support HRDs may be considered a threat to national security and can be hampered from carrying out their work by laws that require NGOs to be registered or that do not allow them to receive funds from abroad.[53] In sum, the magnitude of violations of the rights of HRD is difficult to determine, but it is clear that violations occur frequently and that impunity of perpetrators is rife.

[51] When the theme has been addressed in the CoE policy evaluation (Policy and Operations Evaluation Department 2011), results regarding the CoE will also be presented.

[52] Note by the Secretary-General transmitting the Report on the situation of human rights defenders. A/66/203. See http://www.un.org/en/ga/third/66/documentslist.shtml.

[53] Wrap-up of recent (2014) HRC dialogue with the SR HRD. MFA Messaging System.



Memorial rally for killed human rights defenders, Moscow, Russia (2012)

*International agreements and policy*



HRD are afforded special protection under the 1998 UN Declaration on Human Rights Defenders, which contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the ICCPR.[54] Following the adoption of this declaration, in 2000 a UN special rapporteur (SR) was appointed. The mandate includes seeking, examining and responding to information on the situation of HRD and establishing cooperation with governments and other interested actors.[55]

In 2004, the EU adopted guidelines on human rights defenders that provide suggestions for interventions for defenders at risk and suggest practical means for supporting and assisting HRD. Measures to be taken include sharing information, maintaining contacts with HRD and visibly recognising them by generating publicity, organising visits or extending invitations, and attending and observing trials of HRD.[56] In order to improve their implementation, the EU has recently developed an internal guidance note on human rights defenders. In 2008, the Committee of Ministers of the CoE adopted a declaration on the protection of HRD.[57] June 2014, the OSCE issued guidelines for HRD.[58]

54 http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/53/144.

55 During the period under review, the HRC twice decided (in 2008 and 2011) to prolong the mandate of the SR. The ACHPR and IACHR have also installed a rapporteur on HRD. The development of an enabling environment for human rights defenders' activities is at the core of the mandate of the Commissioner for Human Rights of the CoE. The OSCE has a focal point for HRD.

56 http://eeas.europa.eu/human_rights/guidelines/defenders/docs/16332-re02_08_en.pdf; guidelines were modified in 2008. An EU three-country evaluation (2013) showed mixed results. http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410221/EXPO-DROI_ET(2013)410221_EN.pdf.

57 https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM.

58 http://www.osce.org/odihr/119633.

The protection of HRD is one of the priority themes in Dutch human rights policy (2007, 2011 and 2013). In 2012, the Minister sent a specific action plan for HRD to Parliament, including instruments for creating better conditions for HRD, such as initiatives for EU diplomacy, bilateral diplomacy, diplomat's presence at trials, providing safe houses (possibly also in the Netherlands) for HRD under threat, and financial support to human rights organisations. In some instances, the plan also mentioned objectives. These are broadly defined, e.g. providing better protection for HRD, and safeguarding the independence of SRs.[59]

*Dutch involvement at the multilateral level*

During the 22nd HRC session (2013), Norway introduced a resolution on HRD, requiring states, among others, to ensure that no law should criminalise or delegitimise activities in defence of human rights. This met with strong opposition from some HRC members, coordinated by Egypt. Joint EU action was successful in preventing the text from being watered down. According to human rights organisations 'this is a strong signal of support sent by the UN to the HRD around the world who are prevented from funding their activities'.[60] In the view of the Dutch delegation, this was the most notable result of the 22nd HRC session. The Netherlands supported Norway by co-sponsoring the resolution.[61]

During the period of evaluation the Netherlands made 27 recommendations on HRD at UPR sessions, including a recommendation to enforce the legislative efforts relating to the security of HRD in Colombia (2013, accepted) and a recommendation to investigate all cases of aggression or threats against HRD in Russia (2009, accepted).[62]



Dutch support to the OHCHR contributed to enabling the work on HRD of the SR and the OHCHR country offices. The 2012 report of the SR, for example, states that 252 communications were sent to 83 states.[63] NGOs, including organisations that receive Dutch funding, have contributed to the SR's work, mostly by providing suggestions for the content of reports.[64]

*Dutch involvement at country level*

Most political interventions for HRD at country level have taken place within the framework of the EU. One of the instruments is engaging in a dialogue on human rights with the country concerned. According to the guidelines for human rights dialogues, issues to be discussed are determined per case and can include HRD.[65] With regard to the countries

59 TK 2011-2012, 32735, nr. 47.
60 Protecting human rights defenders. A/HRC/22/L.13. See http://ap.ohchr.org/documents/alldocs.aspx?doc_id=21380; and press release FIDH.
61 Interviews with representatives of EU member states and a like-minded country; MFA archives (messaging system).
62 http://www.upr-info.org/database/.
63 Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/22/47. See http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.47_en.pdf.
64 Interviews with representatives of NGOs. Documentation could not be traced.
65 http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf

included in this evaluation, the EU maintains a high-level human rights dialogue with Kazakhstan. The Human Rights consultations between the EU and Russia were held in Brussels.[66] Local human rights dialogues are held with Colombia, Morocco, the Palestinian Authority and Sri Lanka. In Nigeria, human rights feature as one of the five priority areas for intensified EU political dialogue. In Guatemala, human rights are part of the regional political EU dialogue. In Zimbabwe, despite the sanctions and the absence of a formal dialogue, the EU tries to keep open informal lines of interaction with the government.

The Netherlands has participated in the preparation for these dialogues and has played a prominent role in this process in Russia, Morocco and Nigeria.[67] In the margins of these dialogues, the EU is to organise seminars with NGOs. For this evaluation, it was not explored whether these meetings took place systematically, but in Morocco, Nigeria and Kazakhstan this was certainly the case. Results of the dialogues or consultations are difficult to gauge, because reports usually only describe the topics raised. The general impression is that progress towards results is usually slow. Some critics even state that dialogues are merely a cover for inaction, while others emphasise that they are important for keeping human rights on the agenda.[68]



In addition to human rights dialogues or consultations, the EU issues statements and undertakes other action in favour of HRD, including silent diplomacy and attendance at trials. Results of EU involvement with HRD are mixed. The IOB country studies on Kazakhstan, Palestinian Territories, Sri Lanka and Zimbabwe present cases of joint, successful EU action for HRD and the follow-up of legal cases. In 2010 in Zimbabwe, for example, the EU condemned the ongoing violations of human rights, in particular the abduction and detention of HRD and intimidation of members of Parliament. Late 2012, amidst increasing harassment of civil society organisations, the EU delegation remained firmly at the forefront in the promotion and protection of human rights. The role of the Netherlands varied. In Zimbabwe, it played a proactive and often leading role in initiating EU actions. In Kazakhstan, the Netherlands was also a key player, while in the other countries its role was more supportive. Reasons for diverging degrees of involvement include tactical considerations, Dutch economic or other interests, historical ties, and capacity available at embassies.

The thematic EU evaluation presents a positive example from Guatemala, demonstrating that joint action of EU and like-minded countries led to the construction of a mechanism for well-informed and collective action in favour of HRD. Civil society groups were involved in the selection of cases.[69] Trial attendance of HRD cases has regularly taken place and is appreciated by human rights organisations. Examples include the Palestinian Territories,

[66] EU and Russia do not agree on the venue (currently, only Brussels) and the level of participation (not high-level enough according to the EU). Consultations are scheduled twice a year, but in 2014 they did not take place.

[67] Interviews with MFA staff, embassies and EEAS; http://ecfr.eu/page/-/ECFR73_SCORECARD_2013_AW.pdf.

[68] Harris 2013. King in O'Flaherty et al. (eds.) 2011. Interviews with EU staff and NGOs.

[69] Pettrucci et al. 2011: 52.

Russia, Sri Lanka and Zimbabwe. Usually the member states that are active in the field of human rights attend trials on a rotating basis.[70]

There are also examples where the EU failed to initiate joint action for the protection of HRD. Reasons for the EU's shortcomings regarding the protection of HRD vary and include the fact that member states have other interests and insufficient human rights capacity at EU delegations. In the cases of Morocco, Nigeria and Russia, the different economic interests and other priorities of member states result in different views on human rights issues, and joint action for HRD is either rare (Morocco, Nigeria) or expressed in careful wording (Russia).

The IOB Latin America policy evaluation shows that in both Colombia and Guatemala, the EU has insufficient strength and financial means to operationalise the EU human rights policy.[71] As human rights are increasingly discussed in the framework of the EU instead of bilaterally, member states invest less time and funds in their own policies on human rights and HRD. In Guatemala the IOB evaluation found that the EU did not fill the gap left by the Netherlands after its decision to close the embassy and decrease its support to bilateral human rights programmes. The financial support was only partly replaced by the establishment of a Dutch regional fund that includes a human rights component.[72] The political support was supposed to be replaced by the EU delegation but according to the evaluation report, this role was not sufficiently fulfilled.



Human rights organisations in the Netherlands presented cases from countries that are not included in this evaluation, such as Cameroon and China, confirming the EU's failure to always adequately protect HRD.[73] The findings on the lack of EU's involvement in human rights are in line with the observation of the European Policy Centre: there are many cases where human rights have conflicted with other strategic, security, energy or trade priorities.[74]

The Netherlands addresses human rights issues, including HRD, in its bilateral relations too: during visits by ministers or other high-level officials to countries, by visits of the human rights ambassador and through silent and public diplomacy. Embassies frequently meet with human rights NGOs and individual HRD. Of the countries under review, the one to receive the most high-level visits during the period of evaluation was Russia, especially in 2013, the Russia-Netherlands year. Several issues were raised in conversations, at press

70 Interviews with embassy staff (2). MFA Messaging System. Policy and Operations Evaluation Department 2012.

71 Policy and Operations Evaluation Department 2013b: 165.

72 http://costarica.nlambassade.org/producten-en-diensten/midden-amerika-programma/midden-amerika-programma.html. Since 2010, one MFA staff member based in Costa Rica, covers human rights issues in Central America.

73 Interviews with Dutch NGOs (2).

74 Balfour et al. 2012.

conferences and in public speeches. As these were frequently related to the rights of LGBT people, they will be dealt with in section 4.3.

Among the countries under review, Colombia, Guatemala, Kazakhstan, Nigeria, Russia and Zimbabwe were visited by the human rights ambassador during 2008-2013; Morocco was visited prior to the evaluation period. Reports of the visits inform on the topics discussed, the places visited and the people with whom issues were discussed. It is difficult to assess the effects of these visits. Local human rights organisations reported that they value contacts with high-level representatives from foreign countries. These contacts are considered as recognition of their work and also a form of protection, as having the support of a foreign government may deter perpetrators from committing human rights violations.

Silent diplomacy is, according to representatives of embassies, part and parcel of their daily work. Human rights issues, including cases regarding HRD, are brought up 'whenever possible and opportune'. Internal documents non-exhaustively inform about people met and issues that were raised, but it is difficult to assess whether silent diplomacy was applied consistently and what were the results.



Most embassies in the countries under review maintain regular contacts with HRDs, often but not always related to project support. The frequency of these contacts was not systematically investigated, but in various cases embassies often met with HRDs, and these contacts are valued by both parties.[75] A recent inventory by Amnesty International of the contact with HRD maintained by the embassies of ten countries reported great differences between countries: the contact varied from very frequent to merely celebrating Human Rights Day.[76]

In the Netherlands, several conferences were organised for HRD. One was to inform HRD how to use new media for advancing freedom of expression (2010) and another was on the EU guidelines for HRDs and safe houses (2014). Participants in this latter conference shared experiences with The Hague Shelter City Initiative. The MFA financing of the latter initiative has its origins in a parliamentary resolution (2011). The project started in 2012 and is implemented by a Dutch NGO and facilitated by the municipality of The Hague. It offers HRD the opportunity to escape from a threatening situation and temporarily take refuge in the Netherlands. The 2013 evaluation of the project was highly positive.[77]

Financial support for HRD is mostly provided indirectly through the European Instrument for Democracy and Human Rights (EIDHR) and directly through the Dutch Human Rights Fund (HRF). The HRF includes both support for projects with a worldwide or regional scope and, in countries selected for funding, funding at country level. Other types of funding have

75 Interviews.
76 Amnesty International (2013). Not publicly available.
77 http://www.justitiaetpax.nl/userfiles/file/2014_03_19%20Jaarverslag%202013.pdf. TK 2010-2011, 32735 nr. 4 (Minister's reaction to the resolution). In the meantime, Nijmegen and Middelburg have become shelter cities as well.

also been used for support to HRD, such as extra-budgetary support to the CoE, MATRA or, until 2011, general development cooperation funds.[78]

One of EIDHR's priorities is the implementation of EU human rights guidelines, including those on HRD. In 2010, seven EIDHR projects that specifically addressed HRD were evaluated by external researchers and their overall conclusion was positive.[79] The evaluation concluded that due to the projects 'lives have been saved, violations have halted or reduced, local organisations have been supported in a myriad of ways and rights of defenders are higher in the international and public consciousness than ever before'.[80] Targeted support to groups of HRD proved to be the most successful approach. There were critical comments on networking and capacity building: networks between HRD were not sustainable and communication and cooperation between implementing organisations were poor.

In the period 2008-2013, the Netherlands financed 1274 human rights projects, many of which were intended to protect HRD or included aspects of their work. For the current evaluation, ten HRD projects were assessed: one with a worldwide scope, one with a regional scope and eight country-specific projects. The country projects dealt with safety and security (Sri Lanka), strategic legal procedures in order to protect the rule of law (Guatemala), improving access to justice (Guatemala), human rights education (Morocco, Russia), rehabilitation (Myanmar), prison conditions (Russia), involvement in the UPR process (Russia) and preparing cases against perpetrators (Zimbabwe). The total budget for these projects was about EUR 10.5 million.



In general, the projects succeeded almost fully in realising the envisaged outputs in terms of, among others, training, publications and assistance. The extent to which the envisaged outcomes were achieved varied among the projects. In six of the ten projects most outcomes were achieved in terms of better protection of individual HRD, improved capacity of HRD, increased exposure of perpetrators, assistance to ex-political prisoners and better documentation and oversight of prison conditions. In the other four projects, the outcomes were partly realised.[81]

The project with a regional scope aimed at better protection for HRD both at structural and at individual level. At the structural level, the implementing organisation organised training events on advocacy and campaigning, as well as workshops on financial management. It provided information for national reports (Eritrea, Burundi) that were used in the UPR process. In addition, the organisation carried out a study on HRD working in oil extraction

78 Extra-budgetary funding to the CoE includes the joint EU CoE human rights trust fund. Though this fund is not directly aimed at HRDs, it facilitates their work, for example by funding oversight of places of detention.

79 The information on this theme is based on the final report of the evaluation (2010) of EIDHRs support to HRD. Available at: http://ec.europa.eu/europeaid/what/human-rights/documents/final_public_report_en.pdf.

80 Evaluation report: section 6.5 (effectiveness and impact).

81 Policy and Operations Evaluation Department 2012 and 2013b.

and published two reports on the findings. It also organised a research mission to South Sudan. At the individual level, a safe house was kept up for HRD and thus over twenty HRD were enabled to continue working. In addition, trial observation took place regularly in Uganda and Burundi.

In Guatemala, Dutch support to human rights organisations contributed to ongoing pressure to combat impunity. In Zimbabwe, thanks to Dutch support, a lawyers' organisation was able to handle over 200 cases and organise human rights training for about one thousand people in rural areas. Project support also contributed to the prosecution of perpetrators. In Sri Lanka, as a result of the project some individual cases were better protected, but overall safety of HRD did not improve.

In most countries, important factors for obtaining results were the longstanding experience and professionalism of the implementing organisations. In sum, applying the criteria mentioned in table 1.1, six of the ten HRD projects were highly effective and four were sufficiently effective.[82]

With regard to the situation at country level, the reporting of cases of violations of HRD does not allow for a comparison over the years. However, on the basis of reports and interviews it can be stated that in two countries, Morocco and Zimbabwe, the situation for HRD has improved. In Zimbabwe there was a downward trend in politically driven violations, although HRD remain confronted with serious threats.[83] Morocco's human rights situation improved, and it may be assumed that this facilitated the work of HRD. In the other countries under review the situation for HRD remained similar or worsened.[84]



*Summary*

Table 4.1 summarises the Dutch involvement for HRD at the various levels. It is not limited to individual HRD but also includes the promotion of their work. The table shows that at various levels efforts are made to promote the work of HRD. The most important forum for political action is the EU. However, whether the EU takes action and what wording is used is greatly influenced by other interests of member states. Bilateral diplomacy is mostly limited to silent diplomacy. Human rights are said to be brought up frequently but this could not be verified from reports. Some effects on individual cases could be traced, such as prosecution

82 Details in Policy and Operations Evaluation Department 2012 and 2013b. For the projects in Morocco and Russia and the worldwide and regional projects: narrative reports and interviews with implementing organisations.

83 https://www.gov.uk/government/publications/zimbabwe-country-of-concern/zimbabwe-country-of-concern reports that levels of politically motivated human rights violations have continued to decline throughout the country from a peak of over 23,000 reported cases in 2008 to about 5,000 cases in 2013.

84 http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=220358&year=2013#wrapper. Reporting on attacks and killings of HRD was found for Colombia and Guatemala, but the description of the human rights situation of other countries did not include reporting on HRD. In Colombia, the government is committed to supporting HRD, but in practice not much has changed. In Guatemala the situation for HRD worsened: the number of attacks on them rose from over 300 in 2012 to over 600 in 2013.

of a perpetrator (Zimbabwe), but overall effects in the short run are difficult to measure. Project support is an important instrument for maintaining contacts with HRD and contributing to safeguarding their work. NGOs and HRD value contacts with Dutch embassy staff.

**Table 4.1 Dutch involvement with HRD**

| UN | EU | Country Bilateral interventions (non-financial) | Country Project support | Other |
|---|---|---|---|---|
| Support for resolutions.<br><br>27 recommen-dations in UPR.<br><br>Financial support to work of SR HRD.<br><br>Financial support to OHCHR includes facilitating the work of HRD. No support for individual cases. | HRD discussed during dialogues or consultations. Dutch role limited to preparatory phase. Effective-ness of dialogues is considered low.<br><br>EU action for HRD varies. Some successful cases of HRD protection and follow-up of legal cases. But EU involvement limited when member states have other major interests or when there is insufficient human rights capacity available in delegations.<br><br>Attendance at trials and monitoring.<br><br>Dutch role in EU varies. High profile in Guatemala (until 2010), Russia, Kazakhstan and Zimbabwe. | During ministerial visits, HRD have occasionally been brought up.<br><br>Occasionally (mostly Russia) public statements by members of government.<br><br>Visits by HRA to almost all countries under review. Diplomacy includes individual cases of HRD, no information on follow-up.<br><br>Silent diplomacy, no information on frequency, content and follow-up.<br><br>Contacts between Dutch MRA and embassy staff and representatives of human rights NGOs and individual HRDs (varying intensity).<br><br>Shelter (incidentally). | Indirect through EIDHR.<br><br>Support for 1,274 projects, many of which included HRD.<br><br>Ten projects evaluated: six highly effective, four sufficiently effective | Support to NGO involvement in UPR process (worldwide; regional Africa).<br><br>Elaboration of CoE declaration on the protection of HRD.<br><br>Shelter City programme in the Netherlands.<br><br>Organisation of conferences.<br><br>Human rights prize. |

## 4.2 Rights of women

Ensuring the protection of women's rights in practice entails a variety of domains, some of which have been or will be addressed by other IOB evaluations. The forthcoming IOB evaluation on gender (2015) will deal with standard-setting on gender equality and women's rights in UN forums, and with gender mainstreaming and women's empowerment at country level. It will examine major development cooperation funds. Dutch support to sexual and reproductive health and rights (SRHR) was part of a recent (2013) IOB policy evaluation and in this section the findings will be succinctly summarised. The present policy evaluation focuses on financial support to the OHCHR, Dutch involvement in the UPR process, political efforts at country level and project support through the HRF.



Women march in protest against violence against women, San Lucas Toliman, Guatemala (2007)



*Background*

Women's rights are given special attention because women and girls often face gender-based discrimination that puts them at increased risk of their rights being violated. Women's rights cover the promotion of sexual and reproductive rights and the protection of women against maltreatment, such as violence, rape and human trafficking. The promotion and protection of women's rights and the extent to which these rights are realised – or violated – differs from country to country. Overall it can be stated that progress has been made over the last two decades. However, violations are still common, including trafficking into forced labour and sex slavery. Women are also denied access to education and political participation, and some are trapped in conflicts where rape is perpetrated as a weapon of war.[85] Violence against women has epidemic dimensions: worldwide an

[85] http://www.hrw.org/news/2013/10/03/open-letter-un-security-council-human-rights-watch-human-rights-abuses-democratic-re gives an example. In the Democratic Republic of Congo, serious abuses and rape are frequently reported.

estimated 35% of all women have experienced physical or sexual violence from a partner or sexual violence from a stranger.[86]

*Policy*

Women's rights are specifically enshrined in the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which the Netherlands ratified in 1991. The optional protocol to CEDAW (2000) provides for complaints on violations by state parties.[87] In 1994, the then UN Human Rights Commission (now Human Rights Council) decided to appoint a special representative on violence against women, including its causes and consequences. Since then, the mandate has been renewed. In 2011, the CoE adopted the Convention on preventing and combating violence against women and domestic violence (CAHVIO or Istanbul Convention).[88] In 2008, the EU adopted guidelines on violence against women and girls and on combating all forms of discrimination against them. They include promoting gender equality and addressing the impunity of those who have perpetrated violence against women.[89]

For over three decades, gender equality issues have been addressed in Dutch foreign policy and development cooperation. The key principle of the Dutch position has been that women's rights are human rights that are universal and applicable always and to all women. Cultural and religious traditions and diversity cannot be used as an excuse to deny women their rights. The policy has two tracks: the empowerment of women and the incorporation of women and gender issues into foreign policy, though without providing concrete objectives.[90]



*Dutch involvement at the multilateral level*

In 2007, in the framework of the UN (Third Committee) the Netherlands and France jointly took the initiative to launch a resolution on preventing and combating violence against women. The resolution was adopted without voting and has been maintained ever since. Details on the Dutch role in this process will be presented in the IOB evaluation on gender (forthcoming). The Netherlands is also active in organising meetings on women's rights. In 2013, at the Dutch representation in New York, a round table was organised jointly with Morocco on the role of women in the transition process in the Middle East and North Africa.[91]

86 http://www.hrw.org/news/2013/06/24/violence-against-women-epidemic.

87 http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. A/RES/54/4. See http://www.ohchr.org/Documents/HRBodies/CEDAW/OP_CEDAW_en.pdf. The Netherlands has been a party since 2002.

88 http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm.

89 http://register.consilium.europa.eu/pdf/en/08/st16/st16173.en08.pdf. The document prioritises women's rights within the EU human rights policy towards third countries and sets out a strategy for dealing with cases of human rights violations.

90 A more detailed description of Dutch policy on women's rights will be provided in the IOB evaluation on gender equality (forthcoming in 2015), which will also address the Dutch efforts regarding human rights in the framework of the UN.

91 MFA Messaging System.

The 2013 policy evaluation on Dutch involvement in SRHR concluded that at the level of the UN the Netherlands is an important player that has contributed to maintaining agreed language on sensitive issues regarding women's sexual and reproductive rights, such as the prevention of unsafe abortion.[92]

During the first two UPR cycles, the Netherlands proposed 123 recommendations on women's rights, including two related to the countries under review: one on perpetrators of rape in Morocco and one on combating violence against women and preventing trafficking of women and girls in Nigeria. Both were accepted. About a year after the recommendation regarding Morocco was accepted, it was also implemented: the legislative provision allowing perpetrators of rape to escape from prosecution by marrying the victim was withdrawn.

In the CoE, a convention on domestic violence was negotiated and adopted during the period of evaluation. According to the participants in the negotiation process, the Netherlands played a prominent and constructive role in this process. The convention's content is largely in line with the Dutch position.[93]

*Involvement at country level*



Whereas the Netherlands is a key player regarding women's rights at the level of the UN, its role at country level is mostly limited to project support. It seems that other human rights issues received more attention during EU dialogues and diplomatic efforts than women's rights. The same holds for Dutch bilateral public and silent diplomacy. The probable reason is that safeguarding women's rights relates to structural issues, such as legislation or the cultural ambience, while diplomacy and supportive action are usually related to specific events. In the case of women's rights, violations may not become publicly known or dealt with within the judicial system.

Morocco provides an exception. Here, the adoption of the constitution (in 2011) created new opportunities for the promotion of women's rights. The EU Morocco action plan addresses various aspects related to women's rights, but as has been argued above, the EU was reluctant to broach human rights issues with the Moroccan authorities. The Netherlands addresses women's rights bilaterally during formal and informal contacts with government representatives, but little information is available on the outcome and follow-up.

Notwithstanding its modest use of diplomacy for promoting equal rights for women, since 2007 the Netherlands has supported numerous projects on women's rights. Nine country projects have been included in this evaluation, four of which were in Morocco. These four projects were related to provisions for women's rights in the new Constitution and other legislation or draft legislation, such as the prohibition of child marriage and violence

[92] Policy and Operations Evaluation Department 2013a.
[93] Ministry of Foreign Affairs 2011b. The Netherlands is expected to ratify the convention in 2015.

against women. They all had a component of awareness raising, though with a different scope and among different target groups, such as local delegates and people in marginalised areas. All four projects achieved the foreseen outputs in terms of training and campaigns. They contributed to the interchange of views and dialogues, but it could not be assessed to what extent the foreseen objectives had been realised.

Three projects (Morocco, Russia, Sri Lanka), were wholly or partly related to combating violence against women. The objectives and scope varied considerably. In Sri Lanka the project was small and had a modest scope, aiming to reduce gender-based violence among internally displaced people in a specific area. The project in Russia has a wider scope and a larger budget. It aimed to address domestic violence nation-wide by strengthening and developing a national network. All projects largely realised the foreseen outputs and at least one of the foreseen outcomes, such as the adoption of legislation, an increase in service utilisation, or the establishment of a well-functioning complaint mechanism.

Two projects (Nigeria, Kazakhstan) aimed at combating human trafficking. Both had a substantial budget and an important component was providing shelter for victims. Both achieved the foreseen outputs, but the use of the services was very low in relation to the budget involved. In addition, efforts were made in Nigeria to set up a referral system for cases of human trafficking, but this mechanism was not sustained after the project ended. One of the lessons is to address sustainability when structural changes are envisaged. The remaining project (Palestinian Territories) supported an NGO that provided legal aid and counselling to women. This NGO is considered to be at the heart of the debate on protection of women and is involved in a process of legal reform. Financial means were used to organise training events and for a study on how women's rights are enshrined in the constitution. Through media campaigns the public was informed on the findings of this study. In case of need, women were also provided with emergency protection.



In sum, all projects achieved the foreseen outputs fully or almost fully, one project also almost fully achieved the foreseen outcomes. Of the other projects, three achieved some of the foreseen outcomes and for the other five projects it was difficult to assess whether objectives had been met. This is mostly because awareness raising was an important component in the projects and contributions to change are hard to measure. Applying the criteria described in Chapter one, it can be concluded that one project was highly effective, three projects were sufficiently effective and five projects were moderately effective.

No systematic information was found on results at country level in terms of increased respect, protection and fulfilment of women's rights. Statistics are available for some indicators, such as employment or participation in politics, but they do not allow for a comparison over time. The most recent worldwide estimate of the prevalence of violence against women (2013) provides data up to 2011. It allows for a comparison between countries, but not over time.[94] In Morocco, respondents expressed that the situation had

94 http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1.

improved and it can be assumed that Dutch support for the strengthening of civil society has contributed in some way to this advancement.

*Summary*

Table 4.2 summarises the Dutch involvement with regard to women's rights at various levels. It shows that the Netherlands is a very active player in the UN. It also shows that, with the exception of Morocco, the EU's role at country level is limited and that bilateral action is mostly limited to project support.

**Table 4.2 Dutch involvement with women's rights**

| UN | EU | Country Bilateral intervention (non-financial) | Country Projects | Other |
|---|---|---|---|---|
| Initiative resolution violence against women.<br><br>Prominent role in SRHR debate.<br><br>Numerous side events on women's rights and SRHR.<br><br>123 recommenda-tions in UPR.<br><br>Financial support to work of SR violence against women.<br><br>Financial support to OHCHR includes women's rights. | Women's rights addressed in Morocco. No reporting on other EU action concerning women's rights in other countries.<br><br>EU support for women's rights projects. | Visits by HRA to almost all countries under review. Little information on whether women's rights were being addressed. No information on follow-up.<br><br>Silent diplomacy, no information on frequency, content and follow-up. | Indirect through the organisation 'UN Women' (Morocco).<br><br>Support for 1,274 projects, many of which included women's rights.<br><br>Nine projects evaluated: one highly effective, three sufficiently effective and five moderately effective. | Active role in negotiations CoE convention on domestic violence.<br><br>Support to NGO involvement in UPR process (worldwide; regional Africa).<br><br>Support through various develop-ment cooperation funds.<br><br>Support to NGOs with worldwide scope.<br><br>Organisation of conferences. |

## 4.3 Rights of LGBT people

*Background*

The rights of LGBT people relate to the equal enjoyment of universal human rights for lesbian, gay, bisexual and transgender persons. Particularly, but not solely, in Africa, Asia and the Middle East, many consider homosexuality to be reprehensible on the basis of religion or other grounds, or even to be a 'Western-imposed phenomenon'.[95] Because of their actual or perceived sexual orientation or gender identity (SOGI), LGBT people in many countries are at risk of a violation of their basic rights, ranging from discrimination in health care, jobs, and housing, to censorship, abuse, violence, unlawful detention or even execution.[96] A survey published in 2013 by the EU Agency for Fundamental Rights (FRA) shows that in the EU, almost half of the LGBT survey respondents felt personally discriminated against or harassed on the basis of their sexual orientation. In addition, a quarter of the respondents had been confronted with acts of violence in the previous five years. The percentages are higher when considering transgender persons only.[97]



Procession of the Alliance of Heterosexual People for LGBT Equality, St. Petersburg, Russia (2013)



In 2013, same-sex sexual acts between consenting adults was a criminal offence in 76 countries around the world, which is 40% of the UN member states. In some countries it can lead to lengthy imprisonment sentences and in five countries – Iran, Yemen, Mauritania, Saudi Arabia and Sudan (and some parts of Nigeria and Somalia) – the death penalty may even be imposed. The International Lesbian Gay Bisexual Trans and Intersex Association (ILGA) notes that there have also been some positive developments for LGBT rights, as same-sex marriage laws have been adopted in Argentina, Uruguay, France, and the

95 http://www.amnesty.nl/mensenrechten/encyclopedie/homoseksuelen-homofobie-homohaat; interviews with MFA staff and NGOs.
96 http://www.hrw.org/topic/lgbt-rights.
97 May 2013, http://fra.europa.eu/sites/default/files/eu-lgbt-survey-factsheet_en.pdf.

United Kingdom, bringing the total of countries where same-sex couples can marry to 14.[98] At the UN, the Secretary General and High Commissioner for Human Rights have publicly expressed their support for LGBT. However, at the same time, discriminatory laws regarding LGBT persons have recently been adopted in Russia and Nigeria, which illustrates how contentious the issue is.

*International agreements and policy*

There are no treaties specifically mentioning sexual orientation and gender identity. However, non-discrimination of LGBT is enshrined in all the existing international binding human rights instruments, such as the ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ECHR.[99]

In 2006, at a conference in Yogyakarta, a group of LGBT experts developed the 'Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity'. These principles provide a guide to applying international human rights law to violations experienced by homosexual, bisexual and transgender people.[100] The legal obligations that states have with respect to protecting the rights of LGBT persons are: protecting individuals from homophobic and transphobic violence, preventing the torture and cruel, inhuman and degrading treatment of LGBT persons, decriminalising homosexuality, prohibiting discrimination, and respecting freedom of expression, association and peaceful assembly.[101]



In 2010, the Committee of Ministers of the CoE adopted a recommendation by consensus to fight discrimination on the basis of sexual orientation and gender identity, including by taking legal measures to protect victims of discrimination and to provide access to redress.

An EU Toolkit on LGBT had existed since 2010, and in 2013 binding EU guidelines were adopted by the Council of the EU, instructing EU diplomats around the world how to promote and protect the enjoyment of all human rights by LGBTI persons.[102] The guidelines prescribe that the EU should actively condemn discrimination and criminalisation of LGBTI persons. The instruments to be used are political dialogues or consultations, maintaining contact with civil society organisations, and on a case-by-case basis, engaging in démarches, generating public attention and attending court hearings.

The Netherlands has an international reputation for promoting non-discrimination of the rights of homosexuals: a telling example of this is that in 2001 it was the first country to legalise same-sex marriages. The protection of the rights of LGBT has been one of the main

98 Itaborahy & Zhu 2013.
99 http://www.hrea.org/index.php?base_id=161.
100 http://www.amnestyusa.org/our-work/issues/lgbt-rights/about-lgbt-human-rights.
101 OHCHR, 2012, http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf.
102 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf. Here, the term LGBTI is used, as the guidelines also address the rights of persons with an intersex condition.

priorities for the Netherlands in its foreign human rights policy (2007, 2011, and 2013).[103] The international efforts of the Netherlands are guided by the recommendations of the Yogyakarta Principles and the focus is on decriminalising consensual sex between people of the same sex, combating discrimination on the grounds of SOGI, and promoting social acceptance of LGBT.

In 2010, the MFA published a booklet of guidelines for Dutch embassies on how to implement the available instruments on human rights and sexual orientation. At the diplomatic level these include bringing up non-discrimination on the basis of SOGI during political dialogues, creating alliances for concerted action – both in the EU framework and with other like-minded countries – lobbying for support for UN resolutions, and promoting the use of international human rights mechanisms. Practical instruments embassies are encouraged to use are staying in contact with and providing moral and financial support to civil society organisations, participating in meetings, declaring public support, attending trials, and organising activities on the International Day Against Homophobia and Transphobia (IDAHOT) or Human Rights Day. In order to avoid being counterproductive, embassies are advised to consult with human rights organisations and to make a thorough assessment of possible consequences, prior to engaging in these actions.[104]

*Dutch involvement at the multilateral level*



At the UN the Netherlands is an active and visible player in LGBT issues. In New York, the Netherlands is perceived as the specialist and leader on LGBT rights and it is mentioned that it 'delivers', for example in the LGBT core group and task force, in which it takes part.[105]

In 2008, the Netherlands and France jointly drafted, on behalf of the EU, the first ever statement in the UN on sexual orientation and gender identity.[106] This unprecedented declaration, which was supported by 66 countries worldwide and was presented by Argentina, prompted a strong counter-statement by 60 countries under the lead of the Organization of the Islamic Conference (OIC). [107] The United States was among the states that initially did not sign the declaration; the then Dutch Minister of Foreign Affairs publicly expressed his disappointment about this.[108] Neither declaration has been officially adopted by the General Assembly.

103 In 2007 the term 'LGBT' was not yet in use.
104 Ministry of Foreign Affairs (2010), Mensenrechten en seksuele oriëntatie. Een handleiding voor ambassades.
105 Interviews with Dutch and international NGO and respondent at the European External Action Service.
106 http://www.ilga-europe.org/home/issues/ilga_europe_s_global_work/united_nations/ilga_europe_and_joint_statements/joint_statement_on_sexual_orientation_gender_identity_and_human_rights_at_united_nations_2008.
107 http://www.amnesty.org/es/library/asset/IOR40/024/2008/en/269de167-d107-11dd-984e-fdc7ffcd27a6/ior400242008en.pdf. Thanks to Argentina, other Latin American countries had been persuaded to sign the declaration. In: Policy and Operations Evaluation Department (2013b).
108 http://www.nytimes.com/2008/12/19/world/19nations.html; in 2009, the Obama administration decided to join the 66 states that condemned human rights violations on the basis of SOGI.

In the HRC, the Netherlands is also part of the LGBT core group that seeks to further the rights of LGBT-persons within the HRC. While still maintaining a visible profile on LGBT, the Netherlands has deliberately kept more in the background when it comes to resolutions, hoping that this will lead to countries that are not the 'usual suspects' stepping forward to take on leadership of this issue. This is generally considered a positive and strategic step towards involving 'the global South' in furthering the rights of LGBT. On 17 June 2011, the HRC adopted – albeit with a narrow majority – a ground-breaking resolution expressing 'grave concern' at violence and discrimination against individuals on the basis of their sexual orientation and gender identity.[109] The prime mover for the resolution was South Africa. Efforts to get a follow-up resolution adopted in the HRC had stranded until recently, and South Africa was showing more reluctance in speaking up about LGBT. September 2014, the HRC adopted a second resolution.[110] In February 2013, in the speech given by the then new Dutch Minister of Foreign Affairs at the HRC, in which he outlined the new human rights strategy of the Netherlands, the Dutch stance on SOGI was again emphasised.[111] In March 2013, the EU, led by the Netherlands and other like-minded states, managed to avert a resolution for 'The Protection of the Family', which would have made the traditional family a subject of human rights protection, thereby implicitly excluding LGBT persons.[112]



In the UPR cycles from 2008 onwards the Netherlands made 65 recommendations to countries about SOGI. Of the countries included in this evaluation, Russia was the only one to receive a recommendation from the Netherlands to repeal regional legislation that tolerates discrimination based on sexual orientation (the recommendation was rejected).[113] The majority of the Dutch recommendations focused on anti-discriminatory legislation (for example, equal treatment of same-sex partners under the law); others were more general appeals to address the rights of LGBT. Half (i.e. 32) of the recommendations were rejected, particularly those requiring concrete adaptations in legislation; a further seven received no response or only a general response from the country concerned. The OHCHR and the High Commissioner herself are considered important allies in furthering SOGI issues, both in Geneva and elsewhere.[114]

The Netherlands played an important role in the development of the CoE recommendation, including accepting a watering down of the wording of the final text in order to reach

109 A/HRC/17/L.9/Rev.1 Human rights, sexual orientation and gender identity. In favour: 23, against: 19, abstentions: 3.

110 Interviews with several NGOs in Geneva. http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.27/Rev.1.

111 http://geneva.nlmission.org/statements---speeches/statement-h.e.-mr-frans-timmermans-minister-of-foreign-affairs-of-the-kingdom-of-the-netherlands.html.

112 Report of the 22nd session of the HRC in: MFA Messaging System. However, in June 2014, the resolution 'protection of the family' was adopted in the HRC.

113 http://www.upr-info.org/database/.

114 Interview with an international NGO and report on a meeting with High Commissioner Pillay, in: MFA Messaging System.

consensus. It also provided financial support for the follow-up (expertise and programme support).[115]

The Netherlands was key in facilitating the creation of the EU guidelines, and pushed for the involvement of civil society organisations in the drafting process. LGBT organisations are pleased with the comprehensiveness and usability of the guidelines.[116] However, one of the weaknesses of the guidelines is the lack of an LGBT strategy within the EU itself, which creates a divergence between internal and external EU policy.[117]

*Results at country level*

Most of the countries included in this evaluation can be considered to have an 'LGBT-phobic' environment, with discriminatory policies or criminalising legislation against LGBT persons in place.[118] It was found that concrete implementation of the EU LGBT guidelines at country level is lagging behind and joint EU action is limited, particularly in issuing joint communiqués.[119] For example, the EU member states could not reach consensus about a joint statement after more restrictive legislation regarding LGBT was adopted in Nigeria in 2013.

During high-level human rights consultations between the EU and Russia, the rights of LGBT persons have been addressed, partly as a result of active input from the Netherlands.[120] In Nigeria too, the Netherlands was instrumental in including the rights of LGBT in the preparations for the EU-Nigeria local dialogue, but this evaluation could not assess whether these rights were actually brought up during that dialogue.[121] The EU has been prudent in its human rights contacts with the Moroccan authorities and, as far as is known, LGBT have not been mentioned.[122]



In contrast to the low-key attitude maintained by the EU delegations in addressing LGBT issues in the countries under review, the EU High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton and the EU Special Representative for Human Rights Stavros Lambrinidis appointed in 2012 have both regularly issued public statements regarding the LGBT situation.[123]

115 Policy and Operations Evaluation Department 2011.
116 Interviews with Dutch and international LGBT NGOs.
117 Interviews with a Dutch NGO and an NGO in Brussels.
118 E.g. In Nigeria, early 2014 (which was after the country study was completed), the president signed a pending law criminalising homosexuality, with a sentence of up to 14 years in prison.
119 Interviews, IOB country reports.
120 IOB Country report Russia. At Russia's request, the word 'dialogue' was replaced by 'consultation'. The consultations take place twice a year in Brussels.
121 IOB Country report Nigeria.
122 Interview with Netherlands MFA staff. IOB Country report Morocco.
123 For example, Ashton expressed her condemnation of the 'Same Sex Marriage Prohibition Act' in Nigeria, and regarding Russia, issued two statements in 2013 about rights for LGBT. http://ecdpm.org/wp-content/uploads/2014-European-Parliament-Political-Dialogue-Human-Rights-Article8-Cotonou-Agreement.pdf.

The Netherlands has been one of the most engaged foreign governments to support LGBT in its bilateral relations, either alone or in alliance with like-minded partners such as Germany, United Kingdom, United States, Finland, Norway and Sweden. The importance the Netherlands attaches to the rights of LGBT persons was well-known in the countries under review, even when the embassy was cautious in raising the issue publicly with the authorities, as is the case in Nigeria. This prudent attitude towards the Nigerian authorities was appreciated by local LGBT organisations, because otherwise the issue would become politicised, fuelling the idea that homosexuality is 'an issue of Western countries'.[124] In Zimbabwe, it was found that the embassy was very active on this topic, as one of the few donors. The embassy had taken an active role in enhancing the dialogue on LGBT rights with local civil society organisations and within the international community in Harare. Several respondents valued the context-sensitive approach. At the same time, the general instructions handed out to embassies were considered to be inappropriate to be used in the country context, risking being 'counter-productive and having possible negative effects for LGBT organisations'.[125] In Morocco, the Netherlands was also one of the only actors involved in LGBT issues. The embassy organised an exhibition of photographs and facilitated the viewing of a documentary about gay Moroccan men, at the home of one of the Dutch diplomats. The arrest of two gay men in 2013 prompted the Dutch Ambassador in Rabat to post a message on his Facebook page, which generated much response, including both positive and negative reactions from civil society organisations.[126] This case illustrates the difficulty in gauging the effectiveness of diplomatic actions for LGBT persons, because perceptions differ and outcomes are unknown.



The Netherlands has been outspoken about LGBT rights in its bilateral relations with Russia. The evaluation found that voices in Dutch society, particularly media, Parliament and civil society, exerted a strong influence on the decision to make public statements.[127] Most human rights organisations – both in Russia and in the Netherlands – advised against singling out one human rights issue vis-à-vis the Russian authorities, but in practice – at least in the public eye – the Netherlands became primarily associated with LGBT. This public profile was appreciated by some respondents because of the outspoken support for LGBT, but others felt it had a counterproductive effect in Russian society because it reinforced anti-Western populist sentiments.[128]

[124] IOB Country report Nigeria (2012). Following the statement of UK Prime Minister Cameron that adoption of the so-called same-sex law could lead to withdrawal of UK aid, the issue was discussed in newspapers and the Nigerian Tribune wrote 'the UK will deliberately want to drag Africa into the dragnet of the endorsement of gay rights'. See http://odili.net/news/source/2011/nov/17/629.html. The Netherlands considered 'silent diplomacy' more effective than a confrontational approach. This was confirmed by several respondents.

[125] IOB Country report Zimbabwe.

[126] IOB Country report Morocco.

[127] IOB Country report Russia.

[128] IOB Country report Russia. Several times it was suggested to raise the rights of LGBT in a broader context, particularly non-discrimination.

The Netherlands has provided financial support to LGBT organisations and other NGOs that carry out programmes for LGBT persons. In some regions, particularly the Middle East and North Africa, the Netherlands finds limited possibilities for supporting LGBT issues, both politically, but also in terms of financial support, as organisations working on sexual orientation and gender identity are scarce. This was the case in Morocco. In other regions, possibilities were found.

Three large multi-country projects implemented by two major LGBT-NGOs have been included in this evaluation. One project (2009-2011) focused on capacity building of LGBT networks in Asia, Africa and Latin America. The project achieved most of its envisaged outcomes, such as increased participation of lesbians and transsexuals in the regional network. The other two projects focused on lobbying and advocacy for LGBT in multilateral forums. One project aimed to equip regional LGBTI HRD with the tools to advocate both locally and at the UN level. One of the main activities was to improve the presence of LGBT issues at the HRC and give input for recommendations during the UPR cycles. The project succeeded in getting LGBT organisations' input into country reports and UPR recommendations, but not in achieving the actual implementation of the recommendations by the countries under review. The third, large-scale, project of almost EUR one million ran from 2011-2014 and aimed to get LGBT rights on the agenda in a variety of multilateral forums, by supporting organisations in filing shadow reports and lobbying. The project delivered a large number of outputs, and several examples could be provided where LGBT issues have been placed more structurally on the agenda of multilateral forums, one of the highlights being the adoption of the EU guidelines. Even though attribution is very difficult, it is likely that the activities and achievements of these projects have contributed to creating more structural attention for rights of LGBT persons at the multilateral level.



Eight country-specific LGBT projects implemented in Russia, Nigeria, Sri Lanka and Zimbabwe were included in this evaluation. Most projects focused on capacity building of LGBT organisations or activists, raising awareness of LGBT rights among the public, and providing legal and psychological support to victims of rights violations. Activities ranged from training events and workshops, media monitoring, distribution of information materials, to the organisation of a gay pride or film festival, and provision of legal counselling and preparations of court cases. All projects had a relatively limited budget of on average around EUR 25,000. All were carried out in a homophobic environment.[129] Long-term goals set out in the project proposals, such as increased knowledge and tolerance or legal reform, were therefore rather unrealistic. Nevertheless, most organisations achieved their envisaged results at output level, in terms of training, media roundtables, radio programmes, provision of legal aid to victims of rights violations, and

[129] E.g. in Nigeria, early 2014 (which was after the country study was completed), the president signed a pending law criminalising homosexuality, with a sentence of up to 14 years in prison.

the organisation of events – albeit sometimes in the face of overt intimidation from the authorities or homophobic civilians.[130]

Most projects reached at least part of their envisaged objectives at outcome level, such as slightly more objective news reporting (Nigeria), and greater engagement by civil society in promoting LGBT rights (Zimbabwe). Some outcomes had been particularly successful, such as some prominent public figures coming out about being gay (Zimbabwe). Another example is a lawsuit with a positive outcome for the LGBT community (in Russia), which was probably the result of the involvement of a lawyer from one of the Dutch funded organisations. However, there were also examples of the opposite, where an appeal against the prohibition of a public demonstration was lost (Russia). No examples could be found of a shift in public opinion towards a more positive attitude to LGBT.

In sum, applying the criteria in Chapter 1, five projects were sufficiently effective and six were highly effective in reaching the targeted outcomes. It can be concluded that all projects were as effective as can be expected, given the context in which the projects took place and the long-term commitment required to change society's attitude towards LGBT. The main factors influencing the effectiveness of the projects beyond output level lay outside the sphere of influence of the implementing organisations. Many organisations, particularly in Russia, had to adapt their strategies in the course of the project, due to external negative factors. It can be concluded that on a small scale the projects succeeded in raising awareness of the LGBT community and network building in that community, and in some cases in improving the individual situation of an LGBT person through legal and psychological support. In a modest way, this has helped to create conditions for long-term changes.



No systematic information could be obtained on results at country level in terms of more respect for and protection and fulfilment of human rights. A survey on attitudes in St. Petersburg pointed to the opposite: a more homophobic attitude among the population. In Nigeria, the situation worsened In terms of the legal framework, while in the other countries there seem to have been no changes.

*Summary*

Table 4.3 summarises the findings of this section and shows that at various levels the Netherlands is actively involved in promoting and protecting the rights of LGBT people.

130 IOB Country report Russia. In one of the cases, the Netherlands and a few like-minded countries decided to respond by attending the closing ceremony of a film festival at ambassador level. MFA Messaging System and interview.

Table 4.3 Dutch involvement with rights of LGBT people

| UN | EU | Country Bilateral intervention (non-financial) | Country Projects | Other |
|---|---|---|---|---|
| Initiative for UN declaration. Supportive in achieving HRC resolution.<br><br>Prominent role in LGBT debate.<br><br>Numerous side events on rights of LGBT people.<br><br>63 recommen-dations in UPR.<br><br>Financial support to OHCHR includes rights of LGBT people. | Occasionally addressed in dialogues and public statements (Russia). No reporting on EU action concerning individual cases.<br><br>Important role in drafting EU guidelines LGBTI. | Public statements (mainly Russia).<br><br>Addressed during high-level visits (mainly Russia).<br><br>Visits by HRA to almost all countries under review. Rights of LGBT people one of the themes brought up. No information on follow-up.<br><br>Silent diplomacy, no information on frequency, content and follow-up. | Support for 1,274 projects, some of which included rights of LGBT people.<br><br>Eleven projects evaluated; six highly effective, five sufficiently effective. | Active role in negotiations CoE recommendation on LGBT and the follow- up.<br><br>Providing Dutch experts (CoE; EU).<br><br>Support to NGOs with worldwide or regional scope.<br><br>Organisation of conferences. |



## 4.4 Freedom of expression

*Background*

Freedom of expression, including freedom of artistic expression, freedom of press and internet freedom, as well as the right to information, is considered to be a precondition for a well-functioning democracy, as without free access to information and ideas, citizens cannot exercise their right to vote effectively or take part in public decision-making and are not able to express their views freely. Freedom of expression is frequently restricted through laws and policies that include informal censorship, restrictive press legislation, and harassment of journalists, bloggers and others who voice their opinions. Informal censorship refers to a variety of activities by public officials – ranging from telephone calls and threats to physical attacks – that are designed to prevent or punish the publication of critical material. The right of journalists to protect their sources is also important for safeguarding freedom of expression.



March for International Human Rights Day, Harare, Zimbabwe (2004)



The NGO Freedom House, which publishes annual ratings on freedom of expression, notes there has been a worrying curtailment of this right over the last ten years, including the closing of media outlets, attacks on journalists and the detention of cyber-activists.[131] Every week the NGO Article 19 publishes cases of violation of the right of freedom of expression, and Amnesty International reports that in about 60 countries, people are being imprisoned because they have non-violently expressed their opinions or religion.[132] In sum, it can be concluded that the right to freedom of expression is being violated increasingly frequently.

*Policy*

The right to freedom of expression is defined in Article 19 of the ICCPR and in article 10 of the ECHR. Other international human rights conventions also include articles on this right.[133] In 1993, the then UN Human Rights Commission (now HRC) adopted a resolution establishing an SR on freedom of expression. The rapporteur's mandate requires that information be gathered from governments, NGOs and others on the discrimination, violence or harassment of persons in the exercise of their right to freedom of opinion and expression. His mandate has been extended until the end of 2014.[134]

131 https://freedomhouse.org/report-types/freedom-world.

132 http://www.amnesty.nl/mensenrechten/themas/vrijheid-meningsuiting.

133 ICCPR came into force in 1976. The right may be subject to certain restrictions, 'but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals'. CEDAW and CRC, for example, include freedom of expression for women and children.

134 Freedom of opinion and expression: mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/HRC/25/L.2/Rev.1. See http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/L.2/Rev.1. This resolution (2014) established a three-year extension.

The right to freedom of expression is also provided for in regional human rights charters. In 1997, the Organization of American States (OAS) established the position of an SR. The OSCE has established the post of a special representative on freedom of the media. In 2012, the EU announced in its human rights strategy that guidelines would be developed on freedom of expression; in May 2014 the new guidelines were adopted by the Council of the EU.[135]

Since 2011, freedom of expression has been a specific priority in the Dutch human rights strategy, with a special focus on internet freedom. The policy document published in 2011 described policy intentions, which included organising conferences, supporting projects and requesting that freedom of expression should receive attention in international forums and EU dialogues.[136] The document does not specify goals or tools for policy implementation.

*Dutch involvement at the multilateral level*

In the framework of the UN, the Netherlands has aimed at safeguarding agreed standards, among other things by preventing the adoption of resolutions on other items that may restrict the freedom of expression. For example, in 2013 a draft resolution on combating negative stereotyping was presented at the HRC that included elements of restriction of the freedom of expression, The Netherlands introduced proposals to ensure the resolution guaranteed human rights. Although the negotiation process did result in modifications to the initial draft resolution, the final resolution was not fully in line with Dutch proposals.[137]



Over the period of evaluation the Netherlands made 39 recommendations on freedom of expression and internet freedom at UPR sessions, including a recommendation regarding revising the legislation on criminal libel and refraining from restricting access to the internet in Kazakhstan (2010, accepted).[138]

Dutch non-specified support to the OHCHR includes support to facilitate the work of the SR regarding freedom of expression. The 2013 annual report of the SR for freedom of expression, for instance, is considered a landmark report, elaborating on the interface between the right to privacy and the right to freedom of expression.[139]

A prominent Dutch initiative for safeguarding the right to freedom of expression and information was the organisation of the 'freedom online' conference in 2011. One of its results was the establishment of the 'freedom online coalition', a forum that aims to deepen the discussions on how freedom of expression on the internet is helping to promote social, cultural and economic development worldwide. Follow-up conferences took place in Kenya (2012), Tunisia (2013) and Estonia (2014). The 22 states participating in

135 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf.
136 TK 2010-2011, 32735 nr. 2.
137 MFA Messaging System. The resolution was introduced by the OIC and the EU strongly declared that the OIC was on the wrong track.
138 http://www.upr-info.org/sites/default/files/document/kazakhstan/session_7_-_february_2010/recommendationstokazakhstan2010.pdf.
139 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf.

the coalition share information on potential violations of freedom of expression and other human rights and they support individuals, particularly those operating in repressive environments, to exercise their human rights through the internet and connection technologies on the internet, and through connection technologies around the world.[140]

*Results at country level*

According to the rating system of Freedom House, three of the nine countries included in this evaluation (Kazakhstan, Russia and Zimbabwe) are 'not free', while the others are 'partly free'.[141] Political instruments addressing freedom of expression include EU dialogues or consultations. In Kazakhstan, however, the EU failed to act strategically to protect freedom of expression, and the progress report on the EU-Russia dialogue does not mention any specific freedom of expression violations. In Russia, public statements on freedom of expression are scarce and mostly limited to specific cases, such as the conviction of the members of Pussy Riot.[142] Regarding the other countries included in the evaluation, freedom of expression was not often addressed in public statements or other EU action. An exception is the arrest of the journalist Anouzla in Morocco in 2013, which led to the EU preparing to take action. The Netherlands was among the member states in favour of joint EU action, but before this could be effectuated, Anouzla was released on bail.[143]



Over the period of evaluation, examples of Dutch bilateral public statements regarding freedom of expression in the countries under review are scarce.[144] However, freedom of expression was addressed in bilateral contacts through silent diplomacy, for example in Kazakhstan. In Russia, freedom of expression was among the human rights concerns that were shared in bilateral contacts between ministers (for example, the ministers of Justice) in preparation for the legal forum in St. Petersburg (2013). In addition, Dutch representations maintain contact with bloggers, who value this interest in their work.[145]

In Russia, the Netherlands also aimed to demonstrate the value of freedom of speech and artistic expression by supporting cultural activities in the framework of international

140 https://www.freedomonlinecoalition.com/annual-conference/.

141 http://www.freedomhouse.org/sites/default/files/FIW%202013%20Charts%20and%20Graphs%20for%20Web_0.pdf. Although in Kazakhstan and Russia the constitution provides for freedom of expression, government pressure on media constrains coverage of certain issues, resulting in numerous infringements of this right. In Zimbabwe, the law limits the constitutional rights of freedom of expression in the name of other interests, such as defence or public order.

142 Harris et al. 2013. http://www.indexoncensorship.org/2014/01/eu-freedom-expression-world-2/.

143 https://en.rsf.org/morocco-human-rights-organizations-call-18-02-2014,45889.html. At the time of writing, charges against Anouzla had not been dropped.

144 MFA Messaging System. Archive MFA. As documentation is bulky, cases may have been inadvertently overlooked.

145 Interview with blogger in Russia and TK 2012-2013, 32735, nr. 77. Minister's reaction to an Amnesty International report on freedom of expression in Russia.

culture policy.[146] Activities targeted a young public and trendsetters, such as designers, museum directors, artists and other professionals who are receptive to emulating Dutch freedom of expression and experimentation. The cultural agenda during the Netherlands-Russia year (2013) aimed at fostering dialogue and exchanging ideas in both countries. It also included support to some projects that had an interface with human rights, such as an exhibition of photographs from the Sochi area and workshops on the freedom of speech. The follow-up to these projects has not been explored in this evaluation.

Financial support has frequently been provided for projects promoting and protecting freedom of expression. This evaluation includes one project with a worldwide scope, one large multi-country project and seven country projects.

The multi-country project was implemented in two phases: stage one (2008-2011) covering three countries and stage two (2012-2013) covering seven countries. Total expenditure was over EUR 3 million. The project aimed to promote freedom of expression, media diversity and access to information; to promote the understanding of human rights issues and to empower civil society organisations and journalists. The implementing organisation reported that in 2012 and 2013 a total of 688 media makers from the countries involved in the projects were trained in face-to-face sessions on a series of topics, ranging from basic journalism, through election reporting, gender reporting and conflict-sensitive reporting to online journalism, citizen journalism, ethical use of social media and video or digital security. Other reported results are enrichment of tools available to target groups, such as an open-source telephone platform, support to content producers and reinforcement of access to information (for example, by support to websites monitoring the internet situation).[147] Thus, the project helped to create basic conditions for more freedom of expression and access to information.



The project, which had a worldwide scope, supported the issuing of alerts and helped improve their quality. Anecdotal evidence could be provided that some imprisoned journalists had been released as a result of alerts and campaigning.

The seven country projects varied in scope and theme, ranging from small initiatives to create a network of bloggers, to maintaining a well-known website that provides independent information and has a substantial outreach. One project supported journalists to carry out research projects, thus helping to develop a branch of investigative journalism which until then had been hardly existent in the country concerned. Another project aimed at improving the quality of data on an official public website, in order to meet statutory

146 TK 2011-2012, 31482, nr. 84. This most recent policy document on culture policy defines the objectives of Dutch international culture policy: offering an international platform to Dutch artistic expression and contributing to the strengthening of Dutch economic interests and the consolidation or reinforcement of foreign relations. The policy is focused on fifteen countries, selected partly in light of Dutch economic interests. Among the countries included in this evaluation, only Russia is a priority country for international culture policy.

147 Final narrative report.

standards. Most country projects succeeded in achieving the envisaged results at output level in terms of training, round tables, research projects and publications. In five cases, results at outcome level were also found, such as a substantial increase in visitors accessing a website. In one of these projects, most envisaged outcomes had been achieved and it was reported that web publications were being used by defence lawyers in human rights cases. In four other projects, some of the envisaged outcomes were achieved. In Kazakhstan, Dutch support to a human rights project led to more involvement of civil society in a legislative process to adopt new legislation on freedom of expression and freedom of religion. The legislative process thus became more transparent. However, most of the legislative battles did not lead to the desired outcome. In sum, applying the criteria mentioned in Chapter 1, one project was highly effective, four were sufficiently effective and four were moderately effective.

In the reports of Freedom House there was no mention of any improvements over the period of evaluation in the countries under review. This is in line with the worldwide trend: the numbers of countries in each of the three categories (free, partly free and not free) remained similar.

*Summary*



Summarising the findings, Table 4.4 shows that the Netherlands is more actively involved in promoting freedom of expression at the global level than in the individual countries under review.

**Table 4.4 Dutch involvement with freedom of expression**

| UN | EU | Country Bilateral intervention (non-financial) | Country Projects | Other |
|---|---|---|---|---|
| Modification of text of HRC resolution.<br><br>39 recommen-dations in UPR.<br><br>Financial support to work of SR freedom of expression.<br><br>Support to OHCHR includes freedom of expression. | Rarely addressed in dialogues.<br><br>Initiative for action regarding a journalist in Morocco (partly solved before implementation).<br><br>Joint and successful action for individual case in Sri Lanka. | Visits by HRA to almost all countries under review. Little information on whether freedom of expression was addressed. No information on follow-up.<br><br>Silent diplomacy, no information on frequency, content and follow-up. | Support for 1,274 projects, some of which included freedom of expression.<br><br>Nine projects evaluated: one highly effective, four sufficiently effective and four moderately effective. | Freedom online coalition and follow- up conferences.<br><br>Support to worldwide NGOs. |

## 4.5 Business and human rights

*Background*

Business and human rights relates to the role companies play in the field of human rights. Companies are involved in violations such as child labour, slavery, forced and bonded labour, and having people work under unsafe conditions or without adequate remuneration, or both. Gender discrimination regarding employment and racial or other forms of discrimination at the workplace also contravene human rights standards. There are also human rights violations that affect more than the company's workforce, e.g. the detrimental effects of extracting industries on the environment. The magnitude of the problems varies from country to country. Though awareness of human rights in relation to business has increased and though improvements can be observed, violations are still frequent.[148] A major problem in addressing abuses is that multinational companies usually conduct and outsource their business in many different countries, which often makes it difficult to reconstruct the production chain; another problem is the failure of local authorities to ensure the implementation of legislation regarding human rights in the workplace.[149] Another issue is that legally speaking, multinational companies are not bound to human rights treaties, so it is difficult to hold them accountable directly.



Coal mine in Tausa, Colombia



[148] ILO 2010 provides an example. The incidence prevalence of child labour decreased considerably over the last decade, but an estimated 168 million children are still working, half of them in hazardous conditions.

[149] http://www.ihrb.org/top10/business_human_rights_issues/2014.html identifies ten issues, three of them strongly related to the themes addressed in this evaluation: human trafficking, discrimination of LGBT people and HRD, and movements seeking tax justice and revenue transparency.

*Policy*
In 2011, the HRC unanimously adopted the UN Guiding Principles on Business and Human Rights that apply both to states and to companies, also known as the Ruggie principles.[150] These principles rest on three pillars: the state's duty to protect human rights against violations by private actors, the responsibility of companies to respect human rights, and both states and companies need to provide access to remedies for victims. The first pillar reaffirms existing obligations under international human rights law and implies regulation, policymaking, investigation, and enforcement. The second pillar implies that companies express their commitment to avoid infringing on the rights of others and make this commitment operational through policies and procedures. A core concept in the second pillar is companies' due diligence, e.g. that companies assess adverse impacts on human rights and take appropriate action. The third pillar implies that states and companies take steps to address business-related human rights abuses, via statutory and other grievance mechanisms.

The Organization for Economic Co-operation and Development (OECD) has adopted guidelines for corporate social responsibility (CSR) for multinational companies, which include a section on human rights (1976, revised in 2011).[151] At present, a working group under the CDDH of the CoE, chaired by the Netherlands, is in the process of drafting guidelines on business and human rights.



The EU has been promoting CSR since 2001. In 2011, the EC issued a new policy, but this policy has not been translated into guidelines.[152] The aim of the EU policy is both to enhance positive impacts – for example, through introducing innovative new products and services that are beneficial to society and enterprises themselves – and to minimise and prevent negative impacts. It is stated that CSR policy should be led by companies, and emphasis is given to self-regulatory processes. The EC expects all European enterprises to meet their corporate responsibility to respect human rights, as defined in the UN Guiding Principles. The document, however, does not address the issue of access to remedy.

CSR has been promoted for more than a decade, and more recently, the Netherlands has incorporated the more comprehensive UN principles of business and human rights into its human rights policy. Prior to the adoption of these principles, the emphasis was on companies' responsibility for the chain, with a facilitating role for the government.[153] Since the adoption of the UN principles, policy has become more detailed and now includes

150 http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf.

151 http://www.csrandthelaw.com/uploads/file/OECD%20Guidelines%20for%20Multinational%20Enterprises_2011.pdf. In the section on human rights it is stated that companies should respect human rights and not infringe on human rights of others, should avoid causing or contributing to adverse human rights impacts and should seek ways to prevent or mitigate adverse human rights impacts linked to their business operations.

152 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF.

153 TK 2008-2009, 26485, nr. 62; TK 2009-2010, 31263, nr. 37.

promotion of the guidelines through economic diplomacy, by raising awareness of CSR among companies, calling governments to account for their CSR obligations, promoting transparency and providing good examples.[154] Companies that receive Dutch subsidies are obliged to adhere to the OECD guidelines.

In 2013, the Netherlands was the second country to issue a national action plan on business and human rights.[155] The plan is manifestly the outcome of a negotiation process between departments that had different views on the government's responsibility with regard to business and human rights. It is almost exclusively limited to foreign countries and does not include working conditions in the Netherlands that are not in line with internationally agreed standards.[156] The plan describes concrete initiatives that are mostly related to information and training, both for civil servants and for companies. In addition, it is stated that in preparation for the Dutch EU presidency (2016) the Netherlands will discuss priorities regarding CSR. Furthermore, an instrument developed by the Dutch CSR platform, the Sector Risk Analysis, will be applied to assess in which sectors there is a high risk of negative consequences of Dutch companies' presence abroad and thus assisting companies in their due diligence responsibilities. At the time of writing, these sectors had been identified.

The national action plan also foresees that an independent commission will consider whether the Dutch legislation regarding companies' duty to provide for CSR is in line with the UN principles. Only limited attention is given to other aspects of the third pillar, apart from the organisation of a conference on complaint mechanisms and providing initial funding for a complaints facility.



*Dutch involvement at the multilateral level*

A 'business and human rights' core group consisting of five countries has taken the lead in discussions and side events on business and human rights at the level of the UN. EU member states do not participate in this group; like-minded country Norway does. Early 2011, during a debate on the guiding principles, UN representative on business and human rights Ruggie referred several times to the positive profile of the Netherlands in this dossier.[157] The Netherlands was supportive during the process of adopting the guidelines, but was not considered to be the prime mover. Regarding the follow-up, early 2013 the Netherlands hosted the annual plenary meeting of the Initiative of the Voluntary Principles on Security and Human Rights.[158]

154 TK 2012-2013, 26485, nr. 164.
155 TK 2013-2014, 26485, nr. 174.
156 The National Action plan on Human Rights (TK 2013-2014, 38826, nr. 1) does address the situation within the Netherlands.
157 MFA Messaging System.
158 The voluntary principle initiative regarding security and human rights for extractive sector companies was devised in 2000 by governments, companies and NGOs. Ruggie presented keynote remarks at the 2013 plenary meeting in a personal capacity. http://voluntaryprinciples.org/files/John_Ruggie_Speech_-_2013_Annual_Plenary_Meeting.pdf.

Dutch support to the OHCHR included support to the team that forms the secretariat of the working group on human rights and transnational corporations and other business enterprises. The secretariat has enabled the working group to carry the UN Guiding Principles forward, assisting in their dissemination, implementation and embedding in wider global governance frameworks. The working group examines complaints, visits countries, participates in events and occasionally issues statements. The OHCHR is also involved in organising the UN annual forum on business and human rights, which provides a platform for discussing trends and challenges in the implementation of the guiding principles and promotes dialogue and cooperation on issues linked to business and human rights. In addition, the OHCHR has a role in the direct implementation of the guidelines, mostly by training trainers.

In the period under review no recommendations on business and human rights seem to have been put forward by the Netherlands during UPR sessions, showing hesitance to provide follow-up to the Ruggie principles at country level.[159] It is to be noted that other countries did not provide recommendations on this subject either.

*Results at country level*



Business and human rights issues have been addressed during trade missions, at business lunches and through project support. Business and human rights have also been brought up during bilateral contacts, especially issues related to corruption that may impede foreign investments.[160] During trade missions, government representatives may also bring up various other human rights issues; in some countries, such as Russia and China, this is done systematically. The Dutch government website news item on trade missions focuses on the advantages of these missions, without mentioning human rights or CSR.[161]

In Russia, a country that has been extensively discussed during parliamentary debates, general human rights concerns, including those not directly related to business, are always brought up during high-level trade missions: for example, the case of the death of a lawyer imprisoned in Russia. In Nigeria, the human rights situation and the environmental pollution in the Niger delta were also raised during trade missions. Reports of a Minister's participation in trade missions inform on the issues discussed, but it is difficult to find information on the follow-up to the discussions during trade missions, and the results of the discussions are unknown.[162]

159 Interviews with MFA staff and international NGO. Human rights and business is not among the issues listed on the data base of the NGO UPR-info. Dutch recommendations listed under the category 'other' did not include business and human rights.

160 Interview. No other reports or accounts of these contacts were found.

161 http://www.government.nl/news/2013/12/19/sharp-increase-in-trade-missions.html. The website gives information on a Parliamentary discussion on the subject. 'Missions of this kind are doubly beneficial' according to Minister Ploumen. 'Firstly they enable the business sector to secure orders... It is crucial not to miss the boat in emerging markets... Second we can really make a difference in a great many developing countries with our new agenda for growth, trade and investment'.

162 TK 2008-2009, 26485, nr 65. Interviews.

In Colombia – another of the countries included in this evaluation – coal mining practises are criticised for its negative consequences for the environment and bad workers' conditions. Efforts to improve coal mining practices have so far stagnated and the Netherlands has continued to import coal from Colombia.[163] An upcoming trade mission by the Minister for Foreign Trade and Development Cooperation to Colombia, accompanied by Chief Executive Officers of energy companies and NGOs, will be used to again find a way to improve coal mining and import practices.[164]

At the business lunches regularly organised by the Dutch embassies, CSR is among the topics discussed in, for example, Nigeria. Information on the follow-up to these lunches is scarce.

Companies that participate in trade missions facilitated by the government are obliged to respect OECD guidelines on CSR. Dutch companies are, according to the Dutch CSR platform, insufficiently informed on how to implement the OECD guidelines and they are not always aware that the guidelines prescribe that they are expected to detect abuses that take place in the production chain (due diligence).[165] The commitment to the OECD guidelines is not systematically monitored and, during the period of evaluation, reporting on CSR was not required. However, in the near future large EU based companies (with over 500 employees) are to provide regular information on environmental and social matters.[166] The Netherlands foresees to use the already existing transparency benchmark mechanism for providing this information. It does not include a template for systematic reporting.



With a few exceptions, financial support to projects or activities concerning business and human rights is relatively recent. This evaluation includes one large project with a worldwide scope and two country projects (Nigeria, Russia). The project with a worldwide scope envisioned to show how human rights due diligence can be integrated in different commercial relations. Box 4.1 presents the results.

163 Policy and Operations Evaluation Department 2013b.
164 TK 2014-2015, 26485, nr. 189.
165 http://mvoplatform.nl/overheid-en-mvo-1/overheid-en-mvo/mvoplatform-standpunten.
166 http://europa.eu/rapid/press-release_IP-13-330_fr.htm?locale=en April 2014 adopted by the European Parliament and to be adopted by the European Council.

**Box 4.1** *The deeper integration of human rights due diligence into business activity*

| | |
|---|---|
| **Goal** | To show how human rights due diligence can be integrated into different commercial relations, particularly the natural resources industry in East Africa and ICT in North Africa. |
| **Activities** | Methodology and guidance for applying human rights due diligence in commercial relationships.<br>• Training events.<br>• Capacity building of regional human rights institutions.<br>• Expert meetings, presentations, working group sessions.<br>• Human rights impact assessments and 'State of Play' reports. |
| **Outcome** | A major multi-stakeholder pact to promote human rights due diligence in the extractive sector in East Africa: 'Nairobi Process'.<br>Companies asking for advice.<br>Contribution to the UN Special Rapporteur on Contemporary Forms of Racism's report on Racism on the internet. |

*Source: project documents and interview with representatives of the implementing organisation.*



A large project in Nigeria aimed at combating corruption in the private sector. It has contributed to the development and dissemination of principles of business ethics, including the distribution of a booklet. Representatives from a business network considered the distribution of the principles to be an important step forwards. An unforeseen success of the project was that business organisations of large-scale companies have since organised their own events to adopt and implement the principles. No evidence could be provided of increased implementation of the principles. After a long negotiation process the project also achieved the establishment of a complaints mechanism, but it could not be verified whether this was functioning properly nor whether complaints had increased.

A small project in Russia aimed to introduce the concept of CSR at a business school, among other things by inviting Dutch entrepreneurs to deliver lectures at the school. As follow-up, a Facebook group was set up and the implementing school participates in discussions on CSR, but CSR has not become part of the curriculum. In terms of the criteria mentioned in Chapter 1, one of these three projects was highly effective and the other two were sufficiently effective.

No systematic information was found in terms of results of the implementation of the UN principles on business and human rights at country level. This does not come as a surprise, as these principles have only recently been adopted.

*Summary*
Table 4.5 summarises Dutch involvement in business and human rights and shows that at country level, it is mostly limited to trade missions and some project support.

**Table 4.5 Dutch involvement with business and human rights**

| UN | EU | Country Bilateral intervention (non-financial) | Country Projects | Other |
|---|---|---|---|---|
| Supportive in process of developing and adopting UN principles.<br><br>Financial support to working group on business and human rights. | No reporting on initiatives or action. | CSR addressed during ministerial visits (Colombia, and Russia).<br><br>Addressed during trade missions (Nigeria, Russia).<br><br>Business lunches (Nigeria).<br><br>Visits by HRA to almost all countries under review. Unknown whether CSR was addressed. | Support for 1,274 projects through HRF, of which a small number were projects on business and human rights. They started only recently.<br><br>Three projects evaluated; one highly effective, two sufficiently effective. | Follow-up conference on voluntary principles for extracting industries. |



## 4.6 Theme-overarching involvement

As Dutch human rights policy has a thematic focus, it was decided to focus the evaluation on priority themes. However, the results described in the previous sections only partially reflect Dutch involvement in human rights. In many interviews, interviewees expressed views on Dutch involvement with human rights that were not related to these themes. In this section, an overall assessment of Dutch involvement in human rights will be presented. In addition, this section summarises existing assessments of OHCHR, because this organisation receives a substantial financial contribution from the Netherlands.

### 4.6.1 Profile of the Netherlands

Dutch involvement in *UN forums*, most notably as observer or member in the HRC, is considered to be characterised by knowledge and commitment. The Netherlands fulfils the EU appointments of burden sharing and to be an active participant in the UPR process, putting forward well-considered recommendations. However, over the period of evaluation several respondents noticed a declining human rights commitment on the part of the Netherlands. When asked to be more specific, however, they did not mention concrete cases

or specific cut-off moments. It is likely that several factors have led to the perception of a diminished Dutch human rights profile. In the first place, particularly in 2011 and 2012, during the EU preparatory sessions for the HRC, the Netherlands was hardly cooperative regarding agenda items on Israel or the Palestinian Territories. It obstructed EU consensus on resolutions to investigate the role of Israel in human rights issues in the Palestinian Territories. This has led to the Netherlands losing credibility. Secondly, increased operating in EU framework has led to seeking compromises and a less visible profile for the Netherlands. In addition, due to reduced staff capacity, less time may have been available for preparatory processes. Nonetheless, as the Dutch human rights profile was very high, a lower profile does not mean a low profile. The Netherlands is still considered to be a professional, committed and cooperative human rights partner.

This holds equally true for the Dutch involvement within the CoE. With regard to the supervision of the execution of the ECtHR judgments, the Dutch PR to Strasbourg is one of the most active players in addressing human rights concerns in the member states, including Russia.



In line with the observations regarding involvement in UN forums, some respondents said that the Netherlands has always had a very high human rights profile in the EU, but that there is a declining trend. The most important factor perceived to be contributing to this trend is the lack of staff capacity. Nonetheless, the Netherlands had a very prominent and constructive role in the drafting of the guidelines regarding LGBTI.[167] Despite staff cutbacks, Dutch participation in EU working groups on human rights at country level is still prominent. The Dutch role in initiating and cooperating in the preparatory process for external EU action differs from country to country. Regarding Russia, in 2013 the Netherlands was considered one of the three leaders in promoting and protecting human rights within the framework of the EU.[168] The Palestinian country study revealed a diametrically different example: in 2012 the Netherlands blocked the release of an EU report on Israeli settler violence.[169]

In bilateral human rights policy, visits by the HRA are an important instrument for expressing concerns on priority themes (see previous sections). Box 4.2 presents a general description of his role.

167 The EU guidelines include intersex persons (LGBTI). In Dutch policy the term LGBT is maintained.
168 http://www.ecfr.eu/scorecard/2013.
169 TK 2011-2012, 23432, nr. 329.

**Box 4.2** *Human Rights Ambassador*

**Role**

The mandate of the HRA is to provide the Netherlands with a recognisable, visible and unique profile in the area of human rights, both in the Netherlands and in foreign policy. This also entails striving for greater coherence in Dutch human rights policy and promoting human rights in all areas of foreign and development policy. In 2008, for example, the then HRA was actively involved in the first UPR of the Netherlands in the HRC.

The agenda of the HRA is influenced by the priorities of the human rights policy, but also by requests from Parliament. Since the end of 2007, the MFA has informed Parliament about the work of the HRA, including the topics discussed and the people met during country missions. For example, in 2010, the HRA received visits from human rights defenders; he visited 7 countries, he brought up issues such as the death penalty, freedom of expression and press freedom, and women's rights. He also attended a conference on immigration and human rights, and one on genocide, and he represented the Netherlands at the Roma summit of the CoE.

**Results and follow-up**

In an environment where policy implementation takes place in the framework of the EU, the HRA provides an opportunity to make Dutch policy priorities visible. The success of the HRA in achieving his remit could not be established. Reporting is on activities and no information is provided about results, for example on the follow-up to bilateral missions. Part of the reason for this is that the HRA visits most countries only once. One of the exceptions is Saudi Arabia, which was visited four times in three years by successive HRAs. According to the HRA and MFA, the HRA's role during one of his visits and the Dutch input in the UPR contributed to persuading the Saudi authorities to grant permission for EU member states to attend court hearings.

*Sources: MFA 2011a, and interviews with HRA and NGOs, van Boven 2008.*



## 4.6.2 OHCHR

In the period of evaluation, the Netherlands was one of the main donors to OHCHR with a total contribution of about EUR 50 million in 2008-2013. In addition, the Netherlands is part of a consultative group which looks into the results and management of OHCHR (so-called Rubens Group). OHCHR reports annually about its activities at global, regional and country level. The reports are structured according to the priority areas and, since 2011, give information per priority area on the realisation of the overall expected accomplishments. In evaluation terminology, most of the reporting is at output level. The focus on output is understandable, given that OHCHR's work largely consists of facilitating the special procedures and providing technical assistance to countries. The 2011 report, for example, informs that as a follow-up to the HRC resolution on rights of LGBT people, a study was carried out on discrimination and violence against LGBT people. The 2011 report

also gave information about OHCHR support to the establishment and strengthening of national human rights institutions in more than 40 countries.[170]

The overall performance of OHCHR was assessed by three countries that provide substantial financial voluntary contributions to the organisation: Australia, United Kingdom, Sweden. The assessments were to ascertain whether their contribution to OHCHR provided sufficient value for money.[171] All assessments found the work of OHCHR highly relevant for promoting and protecting human rights. It was also found that the organisation delivers well in its support to the HRC and its special procedures. OHCHR enables the SRs to monitor their area of concern and to issue communications and reports. On the less positive side, all assessments found that there was room for improvement with regard to the internal organisation.

The assessments valued the results at country level differently. The assessment by Australia (2012) considered OHCHR's performance satisfactory. The 2013 assessment of the United Kingdom Department for International Development (DFID) focused on OHCHR's contribution to DFID's development objectives and thus had a limited scope. Good evidence was found of OHCHR contributions to human rights work in fragile states and states recovering from conflict. The assessment found that although improvement could be observed, reporting on results was still weak. A more recent, unpublished assessment by Sweden was more positive and found that OHCHR had developed a more result-oriented culture in the organisation. It concluded that OHCHR's initiatives at country level were producing positive results in its prioritised and thematic areas of activity. It considered OHCHR's external activities to be highly effective.



In sum, OHCHR's work is essential with regard to global advocacy for human rights and the functioning of the HRC and its special procedures. At country level, reporting on results was weak, but improvements have been observed. With regard to management and internal structure there is still room for improvement.

170 http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/downloads/2_Summaries.pdf

171 http://aid.dfat.gov.au/partner/Documents/ohchr-assessment.pdf; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264361/OHCHR-2013-summary-assessment.pdf; Unpublished report by Sweden.



Protest camp of rejected asylum seekers in The Hague, The Netherlands (2012)

5

# Coherence and coordination

# 5.1 Coherence

## 5.1.1 Introduction

The Netherlands considers the three major foreign policy areas – strengthening the Dutch economic position, safety and security, and human rights – as interwoven.[172] Economic progress and investing in safety and security can be favourable for human rights. The reverse is equally true: respect for human rights and the rule of law is favourable for investments and thus for the economic position of the Netherlands. In addition, human rights promotion and protection provides stability and security and can help to avoid terrorism. At the same time, violations of human rights should be avoided during safety and security operations. International development cooperation has an obvious link to human rights. In many programmes in the social sector a human rights based approach is pursued, pointing to the responsibilities of duty bearers and building the capacities of the rightsholders. With regard to SRHR for example, policy documents explicitly refer to the link with various human rights. Links also exist between foreign human rights policy and domestic human rights concerns. Critical remarks on the situation in the Netherlands from treaty bodies and monitoring mechanisms influence the credibility of foreign policy.

In this evaluation, the interface between human rights and other policy areas is explored for international economic and trade policy, and domestic human rights policy (coherence).[173] With regard to coordination, it has been explored how the Netherlands harmonises its human rights policy actions with other countries.



## 5.1.2 International economic and trade policy

The interface between international economic policy and human rights is mostly worded in terms of synergy. The fact that economic interests may impede action in the area of human rights is not mentioned in policy documents. However, in regard to the EU, joint EU action may fail to occur or be weakened because of the economic, trade and energy interests of member states. An illustration: during the process of negotiating Morocco's *Statut Avancé*, member states differed on the language to be used. The Netherlands made a plea for strong human rights wording, but other member states, particularly those with strong economic interests, did not agree and, therefore, human rights were addressed superficially. Russia provides another example of a country where, due to economic interests of some EU member states, the EU manoeuvres carefully in the area of human rights. Nigeria's position

[172] Ministry of Foreign Affairs 2012. Ministry of Foreign Affairs 2007 and 2011b also refer to links with other policy areas.

[173] Safety and security was excluded because most policy interventions are made in a multilateral framework and it would have been complex and time-consuming to explore the Dutch input. Safety and security was brought up occasionally in the previous chapter under the heading 'other Dutch or EU member states interests'. Development cooperation was excluded because, with the exception of the Palestinian Territories, the countries under review are not on the current list of partner countries for development cooperation.

as Africa's leading oil exploiter has led governments to shy away from exerting meaningful pressure on Nigeria over its poor track record on human rights. When trade or other interests such as safety and security are less important, the EU is less hesitant to express its human rights concerns. In Zimbabwe, for example, the EU has frequently expressed its concerns on human rights violations.

With regard to Dutch bilateral human rights interventions such as ministerial visits, visits by the human rights ambassador, silent diplomacy and project support, the impression arising from this evaluation is that these actions at best co-exist with the promotion of economic and trade interests. Concerning the countries included in this evaluation, the Netherlands has the strongest economic interests in Nigeria and Russia. In Nigeria, these interests are particularly related to the large presence of Anglo-Dutch oil company Shell. In Russia, there are important trade relations in a number of areas. In the other countries, these interests are more modest.

In both Nigeria and Russia, human rights violations did not hold the government back from promoting Dutch interests (economic and otherwise). In Russia, the Dutch government decided to send a high-profile delegation to the Olympic Games in Sochi. This decision was criticised for giving the impression of glossing over human rights concerns.[174] At the same time, economic interests did not inhibit Dutch government from publicly expressing its concerns about the human rights situation, more particularly with regard to legislation on the funding of NGOs and on homosexuality (the so-called anti-gay propaganda law, which prohibits "promoting non-traditional sexual relations among minors").



In all countries, visits by the HRA and human rights project support were made independently of, and parallel to, economic diplomacy. These efforts can be considered as two separate tracks. There are efforts to integrate the domains. For example, trade missions provide an opportunity to express concerns on human rights. However, this is neither a formally laid down requirement in general policy nor is it standard practice. A letter to Parliament that explains the objectives of a trade mission does not refer to the promotion of human rights.[175] In some countries, such as China and Russia, human rights are always brought up by the Minister or by the Dutch ambassador when the missions are facilitated by the government. In Nigeria, during a recent trade mission (June 2014), the Minister for Foreign Trade and Development Cooperation discussed the human rights violations in the Niger delta. No information is available on the follow-up to trade missions, and therefore it could not be assessed whether statements on human rights have had any influence.

Business lunches also provide an opportunity to address human rights. At these lunches regularly organised by the Dutch embassies, CSR is among the topics discussed in, for example, Nigeria. Other ways to further CSR have been described in section 4.5.

[174] Interviews. Strongly urged by parliament, the prime minister expressed human rights concerns to the Russian president, both publicly and behind the scenes. He also met with human rights NGOs.

[175] TK 2012-2013, 33625, nr. 33.

Imposing (economic) sanctions is another instrument that can be applied to command respect for human rights. The impact of sanctions, both those imposed because of human rights violations and those imposed for other reasons, is questioned. Economic decline resulting from sanctions may negatively affect the whole population. A positive impact on the human rights situation can only be expected when the sanctions result in weakening the target regime. But if sanctions fail to do so, there is a risk that the government will become more repressive.[176] Sanction policy of the Netherlands is determined by EU council decisions. In the period of evaluation, among the countries under review, sanctions were only imposed with regard to Zimbabwe.[177] This is in line with the findings of a recent study: donors tend to apply sanctions only in countries with which they do not have important political relations, and when much publicity is given to the country's human rights situation.[178]

With regard to export of military goods, EU guidelines prescribe a ban on exporting goods that can contribute to human rights violations.[179] The IOB evaluation of Dutch policy on export control and arms export (2009) found that the Netherland adheres to this ban.[180] However, one of the issues for consideration was to interpret the human rights criterion more rigorously than prescribed, in order to enhance the synergy between the export of military goods and human rights policy. In his policy reaction, the Minister declined to do so.



### 5.1.3 Domestic human rights policy

The Netherlands has a moral and legal obligation to promote human rights, both domestically and abroad. The human rights situation in the Netherlands is much more favourable than in the countries under review. An illustration to this is that, over the period of evaluation, the Netherlands was only rarely found guilty of human rights violations by the ECtHR.[181] Nonetheless, UN treaty bodies and monitoring mechanisms of the CoE have raised concerns on the state of affairs and this may compromise coherence between domestic and foreign policy. This coherence relates to the credibility and thereby effectiveness of Dutch foreign human rights policy.[182] In policy documents it is stipulated to both 'practise what you preach' and 'preach what you practise' in order to be effective in the international context. Policy coherence has been analysed on the basis of interviews, reports of the Netherlands Institute for Human Rights (NIHR), the FRA, the two UPR reviews of the Netherlands, monitoring mechanisms of the CoE, as well as a recently published extensive study on the application of international human rights in the Netherlands.[183] The

176 Peksen 2009.Findings based on cross national data over the period 1981-2000.
177 http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf. At present, restrictive measures (sanctions) also apply to Russia.
178 Nielsen 2013.
179 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF. Human rights is one of the eight criteria.
180 Policy and Operations Evaluation Department 2009.
181 See for example Ministry of Foreign Affairs 2014b.
182 Ministry of Foreign Affairs 2014a and 2013a.
183 Oomen 2014.

sections below focus on three priority areas of this evaluation and also briefly address human rights infrastructure and policy and two other human rights concerns: discrimination and the situation of asylum seekers.[184] Box 5.1 provides an example of where the domains of foreign and domestic human rights policy intertwine in Dutch bilateral relations.

**Box 5.1** *Russian criticism of the Netherlands*

Russia has been one of the most vigilant countries in parrying Dutch and other EU member states' criticism with regard to human rights by pointing to the situation in their countries. When president Putin visited the Netherlands in 2013, he made clear in response to remarks about human rights – particularly those relating to sexual minorities – that the two countries think differently about, for example, 'propaganda for homosexuality' in schools. In turn, he and the Russian Minister of Foreign Affairs raised concerns about, among other things, the exclusion of women from one of the political parties in the Netherlands.

In January 2014, the Russian Ministry of Foreign Affairs published for the second time an extensive report on human rights in the EU, using references to reports from international human rights mechanisms. The Netherlands received criticism for issues such as the treatment of asylum seekers – with the example of Russian asylum-seeker Alexander Dolmatov – its policy on paedophiles, human trafficking in its Caribbean territories, and collecting privacy-sensitive information. EU members in general are criticised for continuing 'to refrain from assuming obligations under basic multilateral human rights treaties, and if they do assume such obligations, these are often accompanied by neutralising reservations'.

*Source: Ministry of Foreign Affairs of the Russian Federation 2013.*[185]



### *Human rights infrastructure*

The Netherlands frequently justifies its human rights policy in other countries by pointing to internationally agreed standards. It is therefore not surprising that countries that have been criticised by the Netherlands for their human rights situation in turn scrutinise the situation in the Netherlands.[186] A substantial number of the UPR recommendations for the Netherlands relate to Dutch adherence to internationally agreed standards and request the ratification of treaties or optional protocols or the lifting of reservations (26/182). However, despite the fact that fundamental rights are anchored in the Dutch Constitution and

[184] Two themes (HRD and freedom of expression) are excluded: in the Netherlands, the rights of HRD are not curtailed and the discussion on freedom of expression is of a different nature, and does not relate to the lack of freedom of expression.

[185] http://www.nrc.nl/nieuws/2014/01/15/rusland-kritisch-over-mensenrechtensituatie-nederland/# and http://www.volkskrant.nl/dossier-kabinet-rutte-ii/poetin-nederland-heeft-pedofielenclub-rusland-niet~a3422391/. Source: Ministry of Foreign Affairs of the Russian Federation 2013.

[186] Source: Ministry of Foreign Affairs of the Russian Federation 2013.

international treaties are directly applicable, there is a 'relative lack of reference to international human rights in policy-making in the Netherlands'.[187]

The Netherlands has ratified seven of the nine international human rights treaties. It has signed the Convention on the Rights of People with Disabilities (CRPD). It did not sign the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) because it disagrees with the sections that provide for equal access to services for migrants without a legal status. The Netherlands has agreed with the individual complaints procedures of five treaties but not with those of the ICESCR, the Convention on the Rights of the Child (CRC) and the CRPD.[188] The CRPD is expected to be ratified in 2015. The response of the Netherlands to the recommendations regarding the complaints procedures (optional protocols) to the CRPD and to the ICESCR has been expressed in general terms only.[189] With regard to the optional protocol to the ICESCR, at the time of writing not much had been changed: the government was still 'considering ratification'.[190]

The Netherlands is party to almost all CoE conventions and the ECHR is a main point of reference for legislation. The Netherlands has signed, but not yet ratified the 2011 European convention concerning domestic violence, known as the Istanbul convention. Ratification is foreseen for 2014.[191]



The Netherlands fulfils its periodic reporting obligations with respect to the international human rights treaties. Treaty bodies consider these reports and draw up general observations. A recent study looked into how the Netherlands deals with these general observations.[192] The overall conclusion is that in comparison to the Finnish government the Dutch government does not take human rights recommendations seriously. The majority of the observations did not result in legislation being modified, or other measures being taken. However, there are important exceptions, most notably with respect to the CRC Committee and to a lesser extent the CEDAW committee. Examples include the establishment of an ombudsman for children and improvement of asylum procedures for children.

The Netherlands fulfils its regular reporting requirements with respect to the UPR process. In addition, in 2008 the Netherlands announced to deliver voluntary interim reports, thus expressing the importance attached to the UPR process.

187 Oomen 2014: 199.
188 http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=123&Lang=EN.
189 http://www.upr-info.org/database/ http://www.mensenrechten.nl/publicaties/zoek; The recommendations concerning the lifting of reservations to CRC were also rejected.
190 TK 2013-2014, 32735, nr 117.
191 TK 2013-2014 33826, nr. 1. It has been stated that a bill for approval of the convention will be submitted to Parliament in 2014. As described in the previous chapter, the Netherlands played an important role in the process of negotiating this convention.
192 Krommendijk 2014.

There is an inter-ministerial human rights consultative body, which meets four times a year. Its aim is to discuss the government's domestic and international efforts in human rights. Nonetheless, question marks can be placed regarding the functioning of the interdepartmental infrastructure, as on many issues consensus cannot be reached between the different ministries. It is often mentioned that the MFA is more ambitious in its human rights objectives than the other ministries, for various reasons.[193] At the same time, the network of collaborating civil society organisations that focus on human rights in the Netherlands (BMO-NL) is not materialising – in contrast to the network regarding foreign policy (BMO).[194]

In 2012, after a long preparatory process, the first Equal Treatment Commission was transformed into a national human rights institute (NIHR).[195] Three of its objectives are: to ensure that legislation and policy are in line with human rights standards, to prevent violations of human rights and to increase awareness of those rights. The institute provides policy advice and also examines individual complaints. These opinions are not legally binding. The institute aims to be the torch-bearer in human rights in the Netherlands.

*National action plan on human rights*



As a follow-up to the 2012 UPR process and recommendations by treaty bodies, the first national action plan on human rights was submitted to Parliament on 10 December 2013.[196] The plan focuses on further elaborating the human rights infrastructure through legislative measures, particularly regarding anti-discrimination, privacy protection, asylum seekers and domestic violence. The plan has been welcomed by Dutch NGOs, but a major criticism is that it is not sufficiently concrete, for example in relation to realising human rights education and awareness raising. Another criticism is that it takes insufficient account of the upcoming decentralisation through which municipalities will be given more responsibility for human rights issues. The NIHR has added that human rights in the Caribbean territories of the Netherlands are not sufficiently addressed either. June 2014 saw the first parliamentary debate on the domestic human rights situation. Most of critical comments on the action plan were discussed, but the debate did not result in concrete promises from the Minister of the Interior and Kingdom Relations.[197]

193 Interviews with MFA staff, AIV 2013, BMO 2013 and Oomen 2014:88-89. For example, tensions between the different departments, most notably the MFA and the Ministry of Education, are claimed to be the reason why a National Action Plan on Human Rights Education never materialised. Interviewees also mentioned the difficult process during the development of the National Action Plan on Business & Human Rights.

194 Interviews.

195 The preparatory process is described in Donders & Olde Monnikhof 2012.

196 TK 2013-2014 33826, nr. 1 (bijlage).

197 http://www.njcm.nl/site/comments/list; https://mensenrechten.nl/sites/default/files/2013-12-10.Toespraak.Laurien.Koster.NationaalActiePlanMensenrechten.pdf. http://www.njcm.nl/site/newsposts/show/334; TK 2012-2013, 33826, nr. 2. Interview with advisory council.

*Equal rights for women*

Despite the attention for gender equality in formal policy in the Netherlands, there is a persistent difference in remuneration for women and men that cannot be explained by other factors, such as socio-economic characteristics. Cases of discrimination of women on the basis of pregnancy have also been reported.[198] Violence against women and human trafficking are serious human rights concerns.

In 2014, FRA published the results of a survey on violence against women, showing that the Netherlands is among the member states where violence is most frequently reported.[199] However, this may be due to less tolerance of violence and more willingness to report. The Dutch government has underlined its obligation and commitment to prevent and combat violence against women, including mandatory reporting. However, the CEDAW committee considers that the approach falls short in recognising gender-related aspects of violence against women.[200] Furthermore, although the Netherlands has played a key role internationally in promoting attention to violence against women, Dutch domestic policies 'were … developed in isolation, and sometimes even in deviation, from these international agreements'.[201]

In a recent report, the CoE Group of Experts on Action against Trafficking in Human Beings (GRETA) welcomes a series of legislative steps and other measures to prevent human trafficking and to protect and support the victims of trafficking.[202] GRETA also identifies issues that should be improved. Victims of trafficking should be given more opportunities to take refuge in a relief shelter. Victims who have committed an offence under the influence of traffickers should not be barred from obtaining a residence permit.



*Equal rights for LGBT persons*

Legislation regarding equal rights for LGBT persons is largely in place, particularly since two new laws came into force that provide for gender modification and lesbian parenthood without interference from a judge. In 2013, the government announced it was considering including discrimination on the basis of gender identity in the legislation on equal treatment, but at the time of writing this had not been realised.[203]

Acceptance of LGBT people is high in Dutch society, but the Netherlands is no longer the most tolerant country in this respect. Bullying at school and aggression against LGBT people are serious concerns. The 2013 policy document on emancipation shares these concerns. It

198 College voor de Rechten van de Mens 2014.

199 European Union Agency for Fundamental Rights 2014.

200 Concluding observations of the Committee on the Elimination of Discrimination Against Women – The Netherlands. CEDAW/C/NLD/CO/5. See http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqMFgv33OTgoZv7ZAgL6thCWEpAzu%2bY%2fajS5sA1kYWa1ya%2f798oNmVVeVwmWoCpMK2mjkEciwqQyUkkcqapd8oBJdZmWV9DjF9BILDgxvCyk.

201 Oomen 2014: 141.

202 http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2014_10_FGR_NLD_w_cmnts_en.pdf.

203 TK 2012-2013, 30420, nr. 180. College voor de Rechten van de Mens 2014.

recognises that aggression still exists despite preventive measures and modifications to the legislation.[204] The NIHR has urged schoolteachers to pay more attention to equal rights for LGBT people.

*Business and human rights*

The NIHR provides several examples from agriculture (particularly market gardening) and road construction, where business enterprises have violated the rights of employees in the Netherlands.[205] Cases of discrimination on the basis of race, chronic illness or disability have also been reported. The institute recognises that that the government has taken preventive measures, but these could be intensified. It recommends translating and disseminating the UN principles and to carry out an investigation of the capacity of labour inspections for examining complaints about human rights violations.

*Other human rights concerns*

Both Amnesty International and Human Rights Watch consider the main human rights issue in the Netherlands to be the policies on refugees, asylum seekers and migrants, particularly immigration detention and the procedures for children. In addition, there are worries of discriminatory practices by officials, such as ethnic profiling.[206]



The 2013 report on the Netherlands of the European Commission against Racism and Intolerance (ECRI) of the CoE, referred to progress that had been made but also pointed to shortcomings in legislation and elsewhere, including the persistent discrimination in places of entertainment, such as hotels, bars and discotheques. In its reaction to ECRI's report, the government expressed its appreciation for ECRI and stated that some recommendations were already being implemented and that the others would be considered, but it did not define the concrete steps that would be taken. In the NIHR's comments on the ECRI report, special emphasis is given to the recommendations to enhance the training on recognising and preventing discrimination.[207]

The situation of asylum seekers was among the major concerns in the report on the CoE Human Rights Commissioner's visit to the Netherlands in 2008. Concerns include the long detention period, insufficient access to essential medical care and education, lack of employment, and the few occupational activities in facilities.[208] The Commissioner visited the Netherlands again in May 2014. In his report (October 2014), he welcomed the national action plan and improvements made with regard to asylum seekers. However, he reiterated

[204] TK 2012-2013, 30420, nr. 180.
[205] http://mensenrechten.nl/publicaties/detail/29203.
[206] HRW 2014 and Amnesty International 2013.
[207] http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/netherlands/NLD-CbC-IV-2013-039-ENG.pdf. TK 2013-2014, 30950, nr. 62. Brief College voor AO discriminatieonderwerpen SZW, Actieplan arbeidsdiscriminatie en Kabinetsreactie ECRI-rapport Nederland. See http://crvdm-zoeken.stippacceptatie.nl/StippWebDLL/Resources/Handlers/DownloadBestand.ashx?id=2308.
[208] https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2189983&SecMode=1&DocId=1375978&Usage=2.

concerns regarding asylum seekers and people unlawfully present in the Netherlands. The government disputed his finding on the extensive use of administrative legislation for asylum seekers and points to the drafting of new legislation. With regard to the situation of people unlawfully present in the Netherlands, the government stated that the 'Netherlands' position in this regard is in keeping with the case law of the European Court of Human Rights (ECtHR)', e.g. fairly balancing 'between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights'.[209]

In reaction to a complaint, in 2009 the European Committee of Social Rights concluded that shelter should be provided to children that are unlawfully present in a country. The committee also concluded that any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children.[210] The situation of asylum seekers has improved but there are still issues of concern, such as insufficient access to medical care and the fact that asylum seekers are detained during the first two weeks after arrival. In addition, there are signs that living conditions for people unlawfully present in the Netherlands fall short of human rights standards.[211]

Summarising this section, it can be concluded that not all concerns of international monitoring mechanisms, the NIHR and NGOs have led to modifications to domestic human rights policy. The above shows that domestic policy may hamper the credibility of foreign human rights policy.



## 5.2 Coordination

Coordination on human rights issues varies. In UN forums, interventions are usually coordinated in the framework of the EU. With regard to the EU bodies, the coordination between the different EEAS divisions involved in human rights and the geographical desks varies, but in general it can be stated that there is room for improvement.[212] Furthermore, the increasing involvement of the EU in external human rights action has not been accompanied by improved coordination between EEAS and the EC, the latter being responsible for the selection, financing and monitoring of human rights projects, both in Brussels and at EU delegations.

209 https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2623087&SecMode=1&DocId=2197540&Usage=2. https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2616163&SecMode=1&DocId=2193108&Usage=2.

210 http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC47Merits_en.pdf.

211 College voor de Rechten van de Mens 2014.

212 Interviews. An audit on EEAS confirms that the complexity of the organisation does not facilitate cooperation. European Court of Auditors 2014.

Coordination between member states on the input to deliver for human rights country strategies and dialogues was difficult to gauge, as documentation was scarce.[213] Coordination between member states within the COHOM and on specific country situations in the regional EU Working Groups is on a voluntary case-by-case basis and the degree to which it functions varies.

At country level, the promotion and protection of human rights often relate to specific cases and action is usually coordinated among EU member states and like-minded countries. For example, EU member states agree on a division of labour regarding assisting trials against HRD (in Russia, Palestinian Territories, Zimbabwe).[214] Coordination of project support varies between no coordination at all to joint financing. In Sri Lanka, the Dutch-supported HRD project was co-funded by other donors and it was the best example of coordinated efforts of several partners in that country. Sometimes, for example in the Palestinian Territories, there are official mechanisms for EU coordination on human rights project support. In other countries, mechanisms are informal or non-existent.



213 EU press releases are not detailed; other documentation is not publicly available and MFA archives (messaging system) only occasionally contain information on coordination concerning dialogues.

214 Interviews with embassy staff and representatives of other countries. Policy and Operations Evaluation Department 2012.




6

A graffiti wall reading 'Justice' in Guatemala City, Guatemala

# Discussion and conclusions

This chapter starts with a summary of the findings, followed by a discussion on policy development, effectiveness and coherence. It ends with conclusions.

## 6.1 Summary

Table 6.1 presents an overview of Dutch involvement concerning the five priority areas at various levels. The table will be illustrated below with a case study (Morocco). The information is limited to interventions and actions in which the Netherlands played a specific role[215] and does not mention regular activities, such as silent diplomacy, the participation in negotiations, participation in the drafting of EU strategies or the preparation of dialogues, participation in rotatory schemes of trial attendance or the celebration of Human Rights Day.

**Table 6.1 Dutch involvement in human rights with regard to priority themes in nine countries**

| Country | UN | EU (preparing dialogues, joint action | Bilateral (non-financial) | Project support | Other |
|---|---|---|---|---|---|
| **Colombia** | UPR rec. HRD (a). | Participation in EU+ group of donors monito-ring peace process (chair twice). | CSR addressed during ministerial visit. Visit by HRA. Diplomacy, active player. | HRD, CSR. | |
| **Guatemala** | | Until 2011 outspoken role and frequent Initiatives for joint statements.<br><br>Initiative for EU+ working group on human rights (grupo filtro). | Visit by HRA. Diplomacy; torch-bearer until 2011. Frequent contacts with NGOs . | HRD (since 2011 no new initiatives). | |
| **Kazakhstan** | UPR rec. freedom of expression (a). | Frequent initiatives, mostly legal cases and freedom of expression. Active in working group. | Human rights brought up during ministerial visit. Visit by HRA. Follow-up of legal cases. | Freedom of expression, human trafficking and multiple themes. | Participation in OSCE human dimen-sion meetings. |



215 With regard to the columns 'UN' and 'other', the information is not exhaustive, because document study focused on the years 2012 and 2013. Documents may also have been overlooked.

| Country | UN | EU (preparing dialogues, joint action | Bilateral (non-financial) | Project support | Other |
|---|---|---|---|---|---|
| **Morocco** | UPR rec. Women (a) Side event. | One initiative (freedom of expression case). Active in working group. | One case brought up during ministerial visit. Frequent contacts with NGOs. Facebook statement on LGBT. | Projects mostly on women's rights. Also multiple themes (human rights education) and anti-corruption. | Co-hosting UN side event on women. Exhibition and film on LGBT. |
| **Nigeria** | UPR rec. Women (a) | Active in working group. | Human rights (CSR) brought up during ministerial visit. Visit by HRA. | Women's rights, LGBT, CSR and multiple themes. | Business lunches on CSR. |
| **Palestinian Territories** | Obstruction of common EU position (2010-2011). | Participation in working group. Obstruction of release of EU report on settler violence (2011). | Human rights brought up during ministerial visits (Israel; Palestinian Authority). Contact with NGOs. | HRD, women's rights and multiple themes. | |
| **Russia** | UPR rec. HRD (a) LGBT (r). | Frequent initiatives. Active in working group. | Human rights brought up frequently during ministerial visits (especially LGBT). Visit by HRA. Public statements (LGBT). Frequent contact NGOs and bloggers. | HRD, women's rights, LGBT, freedom of expression, multiple themes. | Human rights brought up during trade missions. Cultural events related to human rights. Presence at events related to human rights (festivals). |
| **Sri Lanka** | | Participation in working group. | | (until 2011) HRD, women's rights, LGBT, multiple themes. | Organisation of fact-finding mission. |
| **Zimbabwe** | | Outspoken role. Many initiatives. Active in working group (including as co-chair). | Visit by HRA. Outspoken role of embassy in supporting dialogue between different actors. Frequent contacts with NGOs. Shelter. | HRD, women's rights, freedom of expression, multiple themes. | Informal lunch (e.g. for African ambassadors) raising human rights. |

| Country | UN | EU (preparing dialogues, joint action | Bilateral (non-financial) | Project support | Other |
|---|---|---|---|---|---|
| **Not country-specific** | Drafting UN res. women and declaration LGBT (2008). Core group LGBT HRC. Side events. (women; LGBT). | Drafting guidelines LGBTI | | Worldwide and regional projects in all priority areas. Indirectly through EIDHR and CoE. | HRD conferen-ces. Human rights prize. CoE: women's rights and LGBT. Freedom online initiative. Follow-up to conference on business and human rights. |

**rec. = recommendation; (a) = accepted; (r) = rejected.*

The table shows that in all countries, at least one of the priorities has been addressed through project support. In most countries, the Netherlands was an active player in the EU or EU+ working group on human rights. The extent to which this role was also translated into initiatives for joint EU action varied. The Netherlands was a prominent player in initiating EU human rights actions in Guatemala (until 2011), Kazakhstan, Russia and Zimbabwe, but for the other countries fewer or no initiatives at all were reported.



Table 6.2 summarises the Dutch involvement in one of the nine countries. It is clear that Dutch involvement in human rights here is mostly aimed at equal rights for women. The table also shows that bilateral non-financial involvement is mostly limited to silent diplomacy. As argued earlier, the results of this diplomacy are difficult to gauge. The table also clearly shows that the embassy explored the possibilities for addressing the sensitive issue of rights of LGBT people. In the absence of NGOs that can carry out projects, small initiatives were taken to focus attention on the rights of LGBT people. The column 'results' refers to overall changes concerning the priority areas and shows that results have been obtained for HRD and concerning women's rights. Dutch involvement, including its support to civil society, contributed to these improvements.

| Table 6.2 | Dutch involvement in human rights in Morocco | | | | |
|---|---|---|---|---|---|
| **Country** | **UN** | **EU (preparing dialogues, joint action** | **Bilateral (non-financial)** | **Project support** | **Other** |
| **HRD** | | No initiatives. | Silent diplomacy. One case brought up during ministerial visit. | Human rights education. | Overall im-provement in human rights situation; position of HRD in Western Sahara not improved. Possible contribution by diplomacy. |
| **Women's rights** | UPR re-commen-dation Side event. | Part of dialogue. | Silent diplomacy. Frequent contact with NGOs. | Many projects, mostly related to promotion. | Improvements in legislation. Overall situation improved. Project support contributive for changing social climate. |
| **LGBT** | | | Silent diplomacy Public diplomacy (Facebook; exhibition, film). | No projects, due to lack of eligible NGOs. | No changes in legal situation or social acceptance. |
| **Freedom of expression** | | One initiative for common action. Journalist concerned released on bail before action had been taken. | | Project support for investigative journalism. | Unknown; apparently space for freedom of expression narrowing. |
| **Business and human rights** | | | Incidental diplomacy when Dutch companies involved. | Recently support for female entrepreneurs. | Unknown; apparently no changes. |
| **Other** | | Plea for strong wording during negotiations on advanced status. Few result. | | Project support for legal reform and anti-corruption initiatives. | |

# 6.2 Discussion

## 6.2.1 Policy

*Policy consistence*

Over the period 2008-2013 the content of human rights policy was fairly consistent, but the tone of the debate changed considerably. In 2007, an ambitious agenda gave a new impetus to human rights. In 2010 economic diplomacy gained ground and human rights were no longer put at the forefront. The emphasis on the concept 'freedom' and the Minister's preference for silent diplomacy created the impression that less attention was being given to human rights. The Minister's support for exploring a third way between universalism and cultural relativism (the so-called 'receptor approach') led to parliamentary debate in which the Minister was accused of abandoning the concept of universalism. The Minister has denied this. In 2012, human rights regained an important place in foreign policy. The 2013 policy document is much more ambitious than the previous one. The Advisory Council for International Affairs (AIV) assessed that the ambitions of this policy document are in line with the first (1979) policy document. The emphasis on credibility reinforces the ambitious and self-critical tone of the policy document, even though in practice there are shortcomings.



Although over the period under review the priority accorded to human rights by the Dutch government has varied, depending on the government in power, in some of the countries under review the Netherlands has remained the same active player in the field of human rights but in other countries it lost its prominent position. This was due to cutbacks in expenditure and human capacity. The most notable example in this evaluation is Guatemala, where the embassy closed and the EU and a human rights component in the newly established Dutch regional fund for human rights only partially filled the gap. The more careful operating in the field of human rights during the 2010-2011 government was also said to have led to a somewhat less prominent position of the Netherlands in multilateral human rights forums, though the Netherlands is still considered an important player.

*Changing policy environment*

The Netherlands heavily relies on and invests much effort in the internationally agreed legal human rights framework. The importance of this framework is increasingly being challenged by countries with emerging economies.[216]

In the 2011 policy document, new developments were recognised. Financial support was provided for a project to investigate whether the receptor approach could provide an adequate answer. At the time of writing the results of an external evaluation of this project were not yet available.

[216] See Section 2.3 for more details.

In the 2013 policy document it is also acknowledged that traditional dialogues are not always an effective instrument. It is suggested to explore innovative approaches such as trilateral cooperation, to make use of the potential that the internet offers for the dissemination of information on human rights and human rights violations, and to apply an integrated approach for addressing both civil and political rights and economic, social and cultural rights. However, the document does not go into detail on how to apply these approaches with regard to priority areas, instruments and forums.

*Priority setting*
The choice of the priority areas is determined by the gravity of the issue and whether the Netherlands has specific expertise and experience with regard to certain themes. A thematic approach is in line with the fact that the Netherlands aims at an international division of the work on ensuring human rights. However, the international division of the work has not yet come about at country level and has so far been limited to an initiative for an informal division of work on human rights among the EU member states.

The priorities set by the Netherlands may not include issues that human rights organisations believe need to be addressed in a certain country. Structural issues such as justice sector reform are not among the priority themes. Previously, in some of the then partner counties these structural issues were addressed in the framework of development cooperation, but good governance is no longer a priority area for development cooperation. At present, support for justice reform is to a great extent limited to states that are considered fragile or that are recovering from a conflict. The link between human rights and development is mentioned in policy documents and in the most recent human rights strategy it is one of the priority areas. Nonetheless, in policy implementation economic, social and cultural rights receive little attention, though they are included in certain other priority areas, such as equal rights for women and LGBT people.



At country level, the priority setting for diplomacy is mostly defined by the EU human rights country strategies and by events or incidents. Regarding project support, embassies are free to select from the policy priorities those that are most suitable in the country's context and there is also room (40 percent of the financial means) for supporting human rights projects that do not belong to the eight priority areas. In practice, the selection is based on a variety of factors, such as the possibility of supporting favourable trends, requests forthcoming from debates in Parliament, and requests from NGOs in the countries and the capacity of these NGOs. This has led to diversified project portfolios that concentrate on a single priority area or cover a wide range of priority areas.

Overall, portfolios have responded to important problems, though few examples could be found of structural and/or institutional shortcomings being addressed and few LGBT projects addressed transgender people. With hindsight on the effectiveness of projects, in a few cases a question mark can be raised concerning their selection, for instance with regard to a project on human trafficking in Nigeria, where a mechanism for referral of victims proved not to be sustainable and the number of women directly assisted was limited. It can also be stated that in Morocco most of the projects on equal rights for women carried out

similar activities: awareness raising and training. Other aspects (for example, legal assistance for victims of violence) were neglected in the project portfolio. In addition, almost all the projects in Morocco were carried out in urban areas, rather than in rural or more remote settings.

*Selectivity and country selection*
The decision to reduce the countries eligible for project support, which was introduced in 2011 and maintained in 2013, was based on the assumption that selectivity leads to more effective policy implementation, but without providing evidence or a plausible reasoning for this assumption.[217] The countries included in the list were chosen mainly because of the gravity of their human rights situation, but some regions (e.g. western Africa and Central Asia) where serious human rights violations occur are barely represented in the list of countries eligible for project support. Project support facilitates contacts between Dutch embassies and human rights organisations and is therefore useful for information exchange. In countries that are not on the list, Dutch embassies may have limited access to specific information that can be used in bilateral or EU contacts on human rights, and legitimate human rights concerns may be neglected.

### 6.2.2 Effectiveness



*UN*
It is difficult to establish the Dutch contribution to obtaining results at the multilateral level, such as the adoption of resolutions or the modification of resolutions that appear to compromise human rights. However, some examples were found of where the Dutch contribution has been important. Together with some other member states, the Netherlands proposed amendments to a resolution on combating negative stereotyping, thus avoiding that the resolution would include language that does not meet international standards regarding freedom of expression.

The UPR has more influence on countries than was anticipated when the UPR was set up. The NGO 'UPR Info' found that 2.5 years after the UPR, approximately 40 percent of all recommendations had been either partially or fully implemented by states. NGOs have said they value the universal nature of the UPR process and the possibility of exerting at least some form of peer pressure on states.[218] The Netherlands participated in all UPR sessions, generally providing a limited number of – feasible – recommendations.

[217] TK 2010-2011. 32735 nr. 29. A Member of Parliament raised this issue but did not receive a concrete answer.

[218] UPR Info (2012) and interviews with NGOs in Geneva. An in-depth assessment of the extent to which the UPR recommendations have been implemented is beyond the scope of this evaluation. Universal Periodic Review. The Follow-up Programme: On the road to implementation. Geneva, Switzerland.

*EU diplomacy*

Since the Lisbon treaty came into effect, the role of the EU regarding the implementation of human rights policy has increased substantially. Human rights consultations and dialogues are now run by the EEAS. Member states may comment on the draft agenda, but once this agenda has been set, they can only participate as observers during the discussions. Overall, not much evidence could be provided that dialogues and consultations were effective. Results were mostly limited to keeping human rights on the agenda, as is clearly the case for the human rights consultations with Russia, for example. The consultations with that country are tending to become more an exchange of statements by both parties rather than a platform for dialogue.

At third country level, the role of the EU has also increased. Most public statements and diplomacy regarding human rights are coordinated with member states and delivered by the EU. The advantage is clear: a message sent out by the EU has more weight than bilateral interventions. Another advantage is that issues can be raised which are considered too problematic to be addressed by individual member states. Results of EU diplomacy are mixed and depend first and foremost on the political context in a country. However, other factors are also important. Firstly, EU action for human rights may interfere with the economic or other interests of some member states. This leads to carefully negotiated compromises and avoidance of strong language. Secondly, in some countries human rights capacity at EU delegations is insufficient. The country studies revealed that both factors have constrained EU action and thus the potential for effective action. There are, however, also examples of effective EU action, such as the release of a journalist in Sri Lanka.



The role of the Netherlands and its influence on EU action varies. The evaluation revealed that in Guatemala, Kazakhstan, Russia and Zimbabwe, the Netherlands was considered a prime mover in the field of human rights, while in other countries under review the Netherlands did not take many initiatives. In all countries, Dutch representatives participated actively in working groups on human rights, more than once as chair or vice chair. The differences between the countries are attributable to various factors. In the first place, initiatives are dependent on the occurrence of violations and the publicity given to them. Secondly, the number of other member states that are active in the field of human rights and the potential for an agreement play a role. When it is unlikely that the EU will agree on a joint action, the Netherlands may consider it not worthwhile to take an initiative. In addition, the human rights situation in some countries, e.g. Russia, is debated more frequently than that of other countries. And finally, a role is also played by involvement in the past, staff availability and the personal interest in and expertise on human rights of embassy staff, including the ambassador.

*Bilateral diplomacy*

Human rights concerns have been expressed during visits of members of Dutch government to Russia and, occasionally, Colombia (on CSR), Morocco (individual case) and Nigeria (CSR). During high-level visits by Russia to the Netherlands human rights were also addressed. The effects of these diplomatic efforts are difficult to gauge. Information on the

follow-up of these statements is scarce and improvement in the human rights situation is influenced by many factors beyond the control of the Netherlands.
In all countries under review it was reported that human rights are addressed through silent diplomacy in formal and informal contacts of the Netherlands with representatives from the government of the country in question. Silent diplomacy is said to encompass a wide range of issues and to be applied whenever possible and opportune. In Nigeria, for example, the situation regarding LGBT people has been brought up silently. Nigerian representatives of LGBT people consider silent diplomacy the best strategy for a foreign country from the West, because – unlike public statements – it avoids further politicising the issue.

There is no systematic reporting on silent diplomacy. MFA archives provide some information, mostly limited to the topics that were raised and the people met. It is therefore difficult to explore to what extent silent diplomacy has been applied and whether it has had any effects.

*Public statements*
Civil society organisations and Parliamentarians in the Netherlands follow Dutch human rights policy closely. Urged on by Parliament and public opinion, the government has in some instances publicly used strong wording to express the concerns of the Netherlands about human rights. Dutch public diplomacy has not been limited to the rights of LGBT people, but the public statements concerning this priority area were the most visible and controversial. Expressing these concerns is fully in line with international standards and guidelines on policy implementation. It also encourages human rights organisations and other people concerned about violations to continue their work. It may even provide them with some protection.



On the other hand, openly expressing concerns may be counterproductive in the sense that it can provoke increased adherence to traditional values. This was the case in Russia. Public statements on the so-called anti-gay propaganda law were frequently expressed by ministers, high-level officials and private persons or groups visiting the country in the framework of the Netherlands-Russia year (2013). There is no consensus among NGOs – whether Russian or international – about whether this was the most effective strategy. It did result in increasing the visibility of LGBT people, but public statements may have aggravated already existing homophobic feelings. The reactions to a public statement on Facebook by the Dutch ambassador in Morocco (2013) also varied from very positive to very negative. There was general consensus among respondents that the view of representatives of LGBT people in the country itself should be taken into consideration before deciding to speak out. Public statements help to keep human rights on the agenda, though no evidence could be found of direct effects of public statements.

*Human Rights Fund*
The HRF is a valuable instrument. In the countries under review, the availability of funding for projects was important for both the Netherlands and the implementing NGOs. It provides Dutch embassy staff with an easy means for maintaining contacts with civil society

and thus for obtaining information that is not easily available. In turn, NGOs value the contacts with foreign countries as recognition of their work. These contacts might also provide a certain protection in case of need. The flexibility in terms of short procedures is appreciated and useful, as unforeseen human rights issues may arise. Generally, project proposals and project performance were better elaborated than was the case in 2006 (i.e. during the previous evaluation period). The projects included in the current evaluation achieved most of the foreseen outputs and at least some of the foreseen outcomes.

A critical note can be made concerning the choice of activities. Many projects focus on the promotion of human rights through awareness raising and training. Improving the respect for human rights and for their protection and fulfilment tend to be neglected. Yet there are some examples of projects that have addressed one of these fields, for example by aiming to modify legislation, issuing of urgent appeals or providing assistance to victims of human rights violations. Another critical note relates to the choice of implementing organisations. As a result of cutbacks in staff there has been a tendency to focus on large projects implemented by international NGOs or, occasionally, by multilateral organisations. Smaller national NGOs may need more assistance from embassy staff in developing and implementing projects and are therefore neglected. However, these NGOs may be well aware of urgent needs and may have valuable contacts with people whose rights risk being violated.



### 6.2.3 Coherence

In policy documents, the relation between promoting and protecting human rights and other Dutch interests is mostly addressed in terms of potential complementarity and synergy. In other words, in the policy papers the potential tension between promoting human rights and other Dutch interests is recognised hardly or not at all. Country studies on Morocco, Nigeria and Russia, however, revealed that other interests of the Netherlands or of other EU member states, such as safeguarding security or good trade relations, may impede the implementation of human rights policy. Another example relates to the Dutch human rights prize that is awarded annually to a human rights defender. In the period of evaluation, there were two occasions (2011 and 2012) on which the government of the laureate's country (China and India) expressed displeasure at the choice of the laureate and in both cases the laureate was unable to attend the ceremony in the Netherlands. The Dutch media and some parliamentarians made explicit that in the view of the Jury and NGOs working on the matter the Dutch government's response was too mild. It was suggested that the Dutch government manoeuvred carefully in order not to offend the respective governments and thereby harm economic relations.[219]

[219] MFA Archives; interviews. An Indian laureate was denied a passport by the Indian authorities. The ceremony therefore took place in India, but the laureate could not attend the ceremony at the planned moment and no changes were made to enable him to be present. http://www.nieuws.nl/binnenland/20130202/Nederland-geneert-zich-voor-Mensenrechtentulp. TK 2011-2012, aanhangsel van de handelingen 1329.

Promoting human rights and promoting Dutch economic interests are found to be two separate tracks. The Netherlands promotes trade and other economic interests, independently of the human rights situation or the question whether economic relations will be beneficial to the human rights situation. Nevertheless, in some cases efforts are made to integrate economic and human rights policy, e.g. by expressing human rights concerns during trade missions. This happened frequently in Russia, and occasionally in other countries. There are no reports of the consequences of these statements. Another practice has been to require companies that participated in trade missions to apply the CSR principles they have committed to. At the moment though, monitoring of these policies is lacking. In other words, it is not known to what extent companies apply the principles.

The previous chapter revealed that the Dutch government's domestic human rights policy is not always coherent with its foreign policy. Most striking is the fact that in foreign policy the Netherlands strongly emphasises the importance of human rights infrastructure and monitoring mechanisms, yet observations made in reports of treaty bodies rarely had practical consequences and the response to CoE reporting was insufficiently concrete. The most important reason for this is lack of political consensus in the Netherlands. Insufficient coordination between Ministries is also a contributing factor.



## 6.3 General conclusion

The Netherlands is an important player in the field of human rights in multilateral forums and in the framework of the EU. At country level, in four of the nine countries under review the Netherlands was a key actor during the period of evaluation, while in the other countries its role was more modest. Applying a variety of instruments, the Netherlands has contributed to the promotion of human rights. Results include the adoption of UN resolutions, EU council decisions and a better informed population. At country level, the Netherlands has also contributed to creating conditions for improved respect for and protection of human rights. Some effects were found, e.g. modifications to legislation, providing a safe environment for human rights defenders or, occasionally, the release of an imprisoned person. In most cases, however, information on the response and follow-up to actions was scarce. In addition, obtaining achievements, or lack thereof, is influenced by many factors outside the scope of the Netherlands. A critical note can be made with regard to the coherence between foreign human rights policy and economic policy. In addition, domestic human rights issues may hamper the credibility and hence the effectiveness of foreign human rights policy.

# Annexes

# Annex 1 About IOB

## Objectives
The remit of the Policy and Operations Evaluation Department (IOB) is to increase insight into the implementation and effects of Dutch foreign policy. IOB meets the need for the independent evaluation of policy and operations in all the policy fields of the Homogenous Budget for International Cooperation (HGIS). IOB also advises on the planning and implementation of evaluations that are the responsibility of policy departments of the Ministry of Foreign Affairs and embassies of the Kingdom of the Netherlands.

Its evaluations enable the Minister of Foreign Affairs and the Minister for Foreign Trade and Development Cooperation to account to parliament for policy and the allocation of resources. In addition, the evaluations aim to derive lessons for the future. To this end, efforts are made to incorporate the findings of evaluations of the Ministry of Foreign Affairs' policy cycle. Evaluation reports are used to provide targeted feedback, with a view to improving the formulation and implementation of policy. Insight into the outcomes of implemented policies allows policymakers to devise measures that are more effective and focused.

## Organisation and quality assurance


IOB has a staff of experienced evaluators and its own budget. When carrying out evaluations it calls on assistance from external experts with specialised knowledge of the topic under investigation. To monitor the quality of its evaluations IOB sets up a reference group for each evaluation, which includes not only external experts but also interested parties from within the ministry and other stakeholders. In addition, an Advisory Panel of four independent experts provides feedback and advice on the usefulness and use made of evaluations. The panel's reports are made publicly available and also address topics requested by the ministry or selected by the panel.

## Programming of evaluations
IOB consults with the policy departments to draw up a ministry-wide evaluation programme. This rolling multi-annual programme is adjusted annually and included in the Explanatory Memorandum to the ministry's budget. IOB bears final responsibility for the programming of evaluations in development cooperation and advises on the programming of foreign policy evaluations. The themes for evaluation are arrived at in response to requests from parliament and from the ministry, or are selected because they are issues of societal concern. IOB actively coordinates its evaluation programming with that of other donors and development organisations.

## Approach and methodology
Initially IOB's activities took the form of separate project evaluations for the Minister for Development Cooperation. Since 1985, evaluations have become more comprehensive, covering sectors, themes and countries. Moreover, since then, IOB's reports have been submitted to parliament, thus entering the public domain. The review of foreign policy and a reorganisation of the Ministry of Foreign Affairs in 1996 resulted in IOB's remit being

extended to cover the entire foreign policy of the Dutch government. In recent years it has extended its partnerships with similar departments in other countries, for instance through joint evaluations and evaluative activities undertaken under the auspices of the OECD-DAC Network on Development Evaluation.

IOB has continuously expanded its methodological repertoire. More emphasis is now given to robust impact evaluations implemented through an approach in which both quantitative and qualitative methods are applied. IOB also undertakes policy reviews as a type of evaluation. Finally, it conducts systematic reviews of available evaluative and research material relating to priority policy areas.

# Annex 2 Terms of reference Policy evaluation on protection of human rights[220]

These Terms of Reference (ToR) follow the template set out in the new Order on Periodic Evaluations (RPE) that was adopted in July 2012 and entered into force in 2013.[221] Questions focusing on the protection of human rights are supplemented by questions about policy coherence.

## 1 Defining the policy area

This policy evaluation concerns article 1 (2) of the Explanatory Memorandum (MvT) to the Ministry of Foreign Affairs Budget, which reads ‘protecting human rights’. This policy article was included in MvTs in previous years with similar wording. In view of the scope of article 1, promotion of the international legal order and promotion and protection of human rights, the part concerning the international legal order will be the subject of a separate policy evaluation (planned for 2014). This policy evaluation of article 1 (2) covers the period from 2008 to mid-2013.

The investigation is limited to the promotion of human rights through foreign policy. Domestic matters are discussed when they have implications for foreign policy. Promoting the international legal order, promoting good governance, promoting regional stability and the MDG 3 Fund (women’s rights) are all outside the scope of this evaluation because they will be studied in other policy evaluations that are either under way or planned for a later date.



The investigation is limited to focus areas that had priority during a substantial part of the period being evaluated:[222]

- human rights defenders;
- freedom of expression;
- corporate social responsibility;
- women’s rights (as addressed in the UN Human Rights Council, the Third Committee and the Human Rights Fund);[223]
- rights of lesbian, gay, bisexual and transgender (LGBT) persons.

220 ToR have been shortened; full text available at: http://www.iob-evaluatie.nl/.
221 Government Gazette 18352.
222 The draft policy document on human rights for 2013 (whose definitive version is expected in April) and the Minister of Foreign Affairs’ speech in the Human Rights Council (2013) have been taken into account.
223 Other aspects of women’s rights, including the MDG 3 Fund and the implementation of UN Security Council resolution 1325, will be discussed in the policy evaluation on gender policy (2014).

## 2 Background

The Universal Declaration of Human Rights adopted in 1948 and subsequent international human rights conventions and covenants signalled a shared commitment to respecting, protecting and realising human rights. Human rights policy is an important part of Dutch foreign policy. In 2007 the Dutch government drew up 'Human Dignity for All', a human rights strategy for foreign policy, which states that the Netherlands is committed to focusing its efforts strategically on a number of areas. The strategy identifies the following priorities: abolishing the death penalty and combating torture, promoting freedom of religion, women's rights and children's rights, and combating anti-gay discrimination. The Netherlands will also support human rights defenders. The efforts to which the Netherlands commits itself are sometimes very specific, such as organising a seminar, and sometimes related to a long-term goal, such as working towards worldwide abolition of the death penalty.

In April 2011 the policy was updated in a letter from the Minister of Foreign Affairs to the House of Representatives. The letter states that the Netherlands will only take the lead on human rights issues where it has added value and expertise. The focus will be on taking multilateral action where possible. Several issues, such as the death penalty, torture and children's rights, are no longer explicitly mentioned; freedom of expression, internet freedom and corporate social responsibility are identified as new priorities.



In his speech to the UN Human Rights Council in March 2013, the Minister of Foreign Affairs emphasised the principle of universality and the following priorities: human rights defenders, women's rights and rights of LGBT individuals. A new policy document on human rights is expected in April.

Annual expenditure on implementing the human rights policy is between EUR 42 million (2008) and EUR 62 million (2013), divided as follows over the different channels:

| **Expenditure on protection of human rights (in EUR million)** | | | |
|---|---|---|---|
| **Bilateral** | | 27.9 | |
| | Country programmes | | 19.8 |
| | Grants | | 8.1 |
| **Multilateral** | | 13.7 | |
| | OHCHR | | 8.7 |
| | ILO | | 5.0 |
| **Civil society** | | 20.8 | |
| | Radio Netherlands Worldwide | | 14.0* |
| | Misc. | | 6.8 |
| **Total** | | **62.4** | |

** Not included in evaluation; source: MvT 2013.*

A variety of instruments, such as dialogues, diplomacy and project support, to implement the policy at multilateral, EU and country level.

## 3 Goal of the evaluation and main questions to be investigated

The investigation has a dual goal:
- ensuring accountability for the policy implemented;
- identifying concerns for the future.

The question at the heart of the investigation is to what extent, given the resources available and taking account of the efforts of other actors, the efforts made were the ones best suited to contribute to promoting respect for and the protection and realisation of human rights.

This core question can also be summarised as follows: have we picked the right priorities? Have we been effective? In the course of responding to these questions, we address the overall set of issues, the Netherlands' chosen focus in relation to that of other actors, and in relation to the actual and potential impact of Dutch efforts. All these points have been incorporated into the questions to be addressed.



The questions for investigation follow the template for a policy evaluation set out in the new RPE (adopted in 2012), concentrating on human rights policy. In addition to the parameters of the investigation to be conducted (see section 1) and a survey of previous research (see section 4), a policy evaluation consists of three other components: the motivation for the policy, the instruments and expenditures, and an assessment of the policy's effectiveness and efficiency. Policy coherence is not mentioned in the RPE, but is addressed in this policy evaluation.

*Motivation for the policy*

1) What were the reasons for adopting a human rights policy in 2007? What changes were made in the period under review, and why? To what extent are the reasons for adopting the policy in 2007 still valid?

2) What actors at the Ministry of Foreign Affairs are involved in implementing this policy? What changes have there been in the period under review in the institutional position of the units concerned, and what consequences have these changes had?

*Policy areas and corresponding expenditures*

3) What instruments have been used to support human rights defenders and promote freedom of expression, corporate social responsibility, women's rights and the rights of LGBT individuals? How was the current mix of instruments, channels and countries chosen?

4) What financial resources have been used to implement the human rights policy, and how were they allocated among different regions and channels in the period under review?[224]
5) On what basis were the priority themes chosen (perceived Dutch comparative advantage; questions in parliament; Dutch public opinion)?

*Effectiveness and coherence of policy implementation*

6) To what extent is the Dutch investment of human and financial resources in the priorities listed above coordinated with investments by other actors?
   - To what extent were these investments made through the EU? What were the reasons for choosing to make them through the EU? To what extent was the choice motivated by the fact that working through the EU allows the Netherlands to 'hide behind it', thus avoiding raising sensitive issues itself and suffering any adverse consequences? What results has this choice had (synergy, watering down positions as a result of compromises)?
   - To what extent did Dutch investments complement those of other actors?

7) What effects has the human rights policy had? It should be noted that human rights efforts may be justified even when they do not yield immediate results: on moral grounds, because they have long-term effects that are not perceptible in the short term, or because they help strengthen contacts that may prove valuable to bilateral relations in the future, for example after a change of regime.
   - What specific commitments have been formulated with regard to the priority themes?
   - In making commitments, how often have specific intended effects been identified? What is the nature of these intended effects? Possible examples include: the adoption of resolutions on these themes, legislative changes, the release of human rights defenders, and shifts in the discourse on priority themes.
   - What steps have been taken to achieve these effects? For example, the use of instruments like démarches, public statements, quiet diplomacy or negotiations on resolutions, or making money available from funds.
   - To what extent have the intended effects been achieved? At what level have the effects achieved been the greatest (institutional change such as legislation, protection of human rights defenders or other individuals, influence on the general public e.g. through more objective reporting on the themes)? Is it possible to substantiate the conclusion that Dutch efforts have contributed to positive long-term results?
   - Did the Netherlands have a comparative advantage over other countries?
   - What unintended effects (positive or negative) have Dutch efforts had?
   - Have Dutch efforts led to good contacts with human rights organisations and to the acquisition of more information from them?
   - What factors have had a positive or negative impact on the results achieved? To what extent are these factors that the Netherlands has or could have influenced?



[224] Experience with evaluations of human rights projects shows that it is not possible to classify expenditures by theme without extensive investigation, because many activities relate to more than one theme.

8) How great is the coherence between Dutch efforts on human rights priority themes and those in other policy areas?
   - What specific commitments have been formulated with regard to raising the priority themes in other policy areas?
   - How often are these issues raised as part of Dutch efforts in other policy areas? Has this contributed to protecting human rights, and if so how?
   - To what extent is failure to raise these issues due to interests at stake in other policy areas? Is it possible to assess what consequences this has had? If so, what were they?

## 4 Building blocks for the policy evaluation

As the RPE provides, the policy evaluation will rely mainly on secondary sources, such as the evaluation of project support (IOB 2012), the Latin America policy review (2013) and policy evaluations commissioned by the European Commission. The findings of existing studies will be supplemented with information from interviews. The gaps concerning Dutch efforts through multilateral channels and for the period from 2012 to mid-2013 will require a limited amount of supplementary research.

*Gaps and supplementary studies*

The IOB evaluation of the human rights projects covers the period 2008-2011, and thus does not include projects that started after the adoption of the new country list in July 2011. Political interventions in international forums were not adequately examined in the building blocks listed above. Bilateral political efforts and efforts made through the EU have been studied in a number of evaluations, but more information about the use of political instruments in bilateral frameworks would be desirable.



In order to fill these gaps, several supplementary studies will be conducted:

- Two country studies focusing on the coherence of the use of different instruments through different channels. The selection criteria are: regional distribution, the financial magnitude of the project portfolio (especially in 2011/2012), and the country's political and/or economic importance for the Netherlands. On this basis, Morocco and Russia have been selected: two countries in regions that are underrepresented in the studies mentioned above. With regard to Asia (which is also underrepresented), there will only be a study on policy on corporate social responsibility.
- Evaluation of a selection of global or regional projects related to priority themes, implemented from mid-2011 to mid-2013. The evaluations will be conducted on the basis of dossiers and interviews.
- Studies of efforts through the multilateral channel on the themes of freedom of expression, LGBT rights and corporate social responsibility, on the basis of document study (messaging system) and interviews.

## 5 Approach to the investigation

*Description of the policy area*

Questions concerning the components 'motivation for the policy' and 'policy areas and corresponding expenditures' (questions 1-5) will be answered on the basis of document study (with the literature, parliamentary papers and internal messaging as sources) as well as interviews with people involved in policy implementation and with NGO representatives.

*Effectiveness*

The effects of interventions are discussed in almost all evaluations. An assessment can be made for each programme and project of its success in achieving its intended effects. One can almost never be sure of the extent to which these effects are due to the programme or project, however, as it is usually impossible to set up a control group. The policy evaluation is therefore not aimed at reaching any conclusion on this point.

With regard to bilateral political efforts, which are mostly made through the EU, it is possible to assess the degree to which the Netherlands has fulfilled its specific commitments on priority themes. Conclusions about the Dutch contribution to the result are based mainly on the perceptions of participants in negotiations. The same applies to political interventions in international and regional forums. The effects of Dutch efforts will be presented in the policy evaluation by theme.



When EU directives are available, they provide a frame of reference for assessing effectiveness; otherwise international standards are used. Where possible, findings about the different themes will serve as a basis for drawing conclusions about the effectiveness of efforts through the different channels. Document study and interviews have been the main methods of gathering information for the evaluations that have already been conducted, and will be the main method for the studies that have not yet started.

*Coherence*

The specific commitments in other policy areas with regard to the priority themes will be set out on the basis of policy documents. The extent to which these commitments have been fulfilled will be assessed using documentation (parliamentary papers concerning ministerial and senior official visits, and the messaging system) and interviews. Coherence will be a major focus of investigation in the country studies that are still to be started. Findings about coherence based on project evaluation will be supplemented by interviews and document study.

For logistical reasons, the consequences of the lack of human rights efforts in other policy areas will only be systematically explored in the country studies that are still to be started.

One limitation in assessing coherence is that is difficult (in the available time, with the available means) to investigate things like informal contacts with companies, which are not reflected in official reports. In addition, the policy evaluation will mainly shed light on what has happened, as opposed to what has not happened.

## 6 Scope

*Period under review*
The evaluation covers the period from 2008 to mid-2013, starting with the publication of the human rights strategy 'Human dignity for all' at the end of 2007. IOB published an evaluation of the previous years in mid-2006. The end of the period under review will be marked by the expected completion of the last building block for the present policy evaluation.

*Instruments and channels*
The investigation will look at most of the instruments used. IOB has carried out studies in 10 countries (see the list of completed evaluations), and will conduct studies in two more countries for this policy evaluation (see the second part of section 4). A number of other countries have been included in evaluations by third parties, such as the EU. The evaluation related to regional forums focuses on the Council of Europe (its work on the LGBT dossier). Dutch efforts in regional forums outside Europe are only examined in one document study of a regional project. The evaluation of Dutch efforts in multilateral forums is limited largely to the Human Rights Council (studies of three themes and two countries) and the OHCHR.

*Themes*
In view of the magnitude of the policy area, it will not be possible to devote equal attention to all the priority themes. Political initiatives at bilateral level are often occasioned by current events, such as the looming conviction of a human rights defender. Project support is more often given on long-term issues, such as the need for better protection of women's rights.



## 7 Representativeness

The diversity of instruments and forums has implications for the representativeness of the policy evaluation. The building blocks listed above and the studies still to be conducted cover all of the priority themes and most of the instruments. The building blocks cover at least 20 countries (12 in our own studies and at least 8 in studies by others). In view of the variety of themes and the differences between different countries and forums, results for one country or forum cannot be extrapolated to others. However, the studies do give a good overall picture of Dutch human rights policy.

## 8 Organisation

Marijke Stegeman and Saskia Hesta of the IOB are conducting the policy evaluation. An external expert (selected through a limited bidding procedure) will be contracted to conduct one of the two supplementary studies and to assist in writing the synthesis report. A work placement trainee or a second staff researcher may be requested for supplementary document study. A peer group will guide the study; the two members of the project evaluation peer group will be asked to take part in it, as will someone from the academic community. Nico van Niekerk and Bas Limonard of the IOB will act as peer reviewers.

# Annex 3 Building blocks

| Building blocks for the policy evaluation |
|---|
| Evaluation of Dutch support to human rights projects (IOB 2012). Incudes five country studies (Kazakhstan, Palestinian Territories, Nigeria, Sri Lanka and Zimbabwe) and a desk study. IOB report no. 372. |
| Policy evaluation 'Five years Warsaw Summit of the Council of Europe' (IOB 2011). IOB report no. 346. |
| Studies on Dutch support to human rights in Latin America (Guatemala and Colombia) that have been carried out in the framework of the policy evaluation Latin America (IOB 2013), IOB report no. 382. |
| Balancing ideals with practice. Evaluation of Dutch support to sexual and reproductive health and rights 2007-2012. (IOB 2013). IOB report no. 381. |
| Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms (2011). |
| Evaluation and recommendations on EIDHR support to human rights defenders (2010). |
| Assessments of OHCHR by Sweden (2013), Australia (2012) and DFID (2011). |
| Evaluations commissioned by Embassies or the Human Rights Division of the MFA. Narrative project reports. |
| Systematic review in the area of corporate social responsibility (IOB 2013). IOB report no. 377. |
| IOB Country studies Morocco (2013) and Russia (2014). |

# Annex 4 Interviews: Institutes and organisations

| Type organisation | Number of interviews | Respondents per interview |
|---|---|---|
| **Netherlands, Advisory Councils** | 2 | 2x2 |
| **Netherlands, MFA**<br>(HRA; country desks Morocco and Russia; Management DMM, staff DMM/MP; thematic departments on gender and CSR) | 12 | 12x1 |
| **Netherlands, other Ministries**<br>(Education, Culture and Science; Interior) | 2 | 2x1 |
| **Netherlands, NGOs (11)** | 11 | 2x2; 9x1 |
| **Netherlands, independent experts** | 2 | 1x2 |
| **Geneva, Permanent Representation NL**<br>(staff HRC, economic affairs) | 3 | 1x2; 2x1 |
| **Geneva, OHCHR** | 5 | 1x3; 1x2; 3x1 |
| **OHCHR, person based in New York** | 1 | 1x1 |
| **Geneva, representatives other countries** | 2 | 1x2; 1x1 |
| **Geneva, NGOs** | 5 | 1xgroup; 4x1 |
| **Brussels, EEAS** | 4 | 4x1 |
| **Brussels, NGOs** | 3 | 2x1; 1x1 (phone) |
| **International NGO, based in New York** | 1 | 1x2 |
| **Country study Morocco**<br>(staff MFA; representatives other countries; representative EU delegation; UN Women; semi-public sector; NGOs) | 14 | 4xgroup; 3x3; 1x2; 6x1 |
| **Country study Russia**<br>(staff MFA; representatives other countries; semi-public sector; representative EU delegation; NGOs; individual) | 24 | 2xgroup; 3x3; 6x2; 13x1 |
| **Total number of interviews held** | **91** | |

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This report presents the findings of a policy evaluation of Dutch involvement in human rights during the period 2008-2013. It zooms in on five themes in Dutch policy: human rights defenders, women, LGBT, freedom of expression, and business and human rights. It is based on a number of sub-studies, including country studies in Colombia, Guatemala, Kazakhstan, Morocco, Nigeria, Palestinian Territories, Russia, Sri Lanka and Zimbabwe, and an assessment of human rights projects. The findings show that Dutch human rights policy has been consistent and has contributed to the promotion of human rights. The overall conclusion of the evaluation is positive, though the role of the Netherlands varies at country level. A critical note is placed regarding the limited information on the follow-up of diplomatic action. Furthermore, the coherence between foreign human rights policy and economic policy can be strengthened. The evaluation also concludes that domestic human rights policy may hamper the credibility of Dutch human rights policy abroad.



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